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3 WILLIAM ANDREW SMITH

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1 EXAMINATION UNDER OATH OF WILLIAM ANDREW SMITH
2 was taken on May 10, 2018, commencing at 10:08 a.m., at
3 the offices of the Arizona Corporation Commission,
4 Securities Division, 1300 West Washington Street, Third
5 Floor, Phoenix, Arizona, before Jody L. Lenschow, RMR,
6 CRR, Certified Reporter No. 50192 for the State of
7 Arizona.

8

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* * *

10 APPEARANCES:

11 For The Arizona Corporation Commission
12 Securities Division:
13 ARIZONA CORPORATION COMMISSION SECURITIES DIVISION
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21 For the Respondents:
22 CHESTER & SHEIN, P.C.
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26

27 ALSO PRESENT: Ms. Shannon Nelson, Investigator III,
28 Securities Division

29

30

31

1 WILLIAM ANDREW SMITH,
2 called as a witness herein, having been first duly
3 sworn by the Certified Court Reporter to speak the
4 truth and nothing but the truth, was examined and
5 testified as follows:

6

7

EXAMINATION

8 BY MR. BURGESS:

9 Q. Good morning. This is part of an inquiry by
10 the Securities Division of the Arizona Corporation
11 Commission in the matter of Smith & Cox, LLC, et al.,
12 Enforcement File No. 8686, in order to determine if
13 there has been full compliance with the Securities Act
14 of Arizona and/or the Arizona Investment Management
15 Act. The information obtained today may reveal
16 violations of statutes outside of these two acts.

17 The persons present are myself, James
18 Burgess, counsel for the Securities Division, and
19 Securities Division Investigator Shannon Nelson.

20 Counsel, please identify yourself.

21 MR. CHESTER: Mark Chester, Chester &
22 Shein, for Respondent Smith.

23 MR. BURGESS: Nice to see you again,
24 Mr. Chester.

25 MR. CHESTER: Likewise.

1 MR. BURGESS: And I'm sorry, did you
2 already administer the oath?

3 THE COURT REPORTER: Yes.

4 BY MR. BURGESS:

5 Q. Still early for me.

6 Mr. Smith, you have the right to refuse to
7 answer any questions if you think the answer may tend
8 to incriminate you. You have the right to refuse to
9 produce any private papers you feel may tend to
10 incriminate you. You do not have the right, however,
11 to refuse to produce corporate papers based on any
12 claim of self-incrimination. I want to address the
13 fact that Mr. Chester, who is representing you here
14 today, also represents other parties in this matter;
15 namely, Smith & Cox, LLC, which I understand is your
16 firm. Mr. Chester also represents your wife, Kimberly
17 Ann Smith, and Christopher Spence Cox and his wife,
18 Beth Cox.

19 If you choose to be represented by
20 Mr. Chester, you should be aware that a possible
21 conflict of interest may exist on the part of
22 Mr. Chester and his law firm. That is to say, facts
23 developed during this investigation, as revealed to
24 Mr. Chester, may result in a situation where he is
25 required to choose between competing interests among

1 his multiple clients in this matter, with the result
2 that he may not be able to objectively represent all
3 his clients' interests.

4 I am bringing this, we are bringing this to
5 your attention solely to advise you of your right to
6 independent counsel of your own choosing, and it is not
7 intended to dissuade you from engaging Mr. Chester or
8 his firm, nor do these comments directly or indirectly
9 reflect upon the character, integrity of Mr. Chester or
10 his law firm.

11 Mr. Smith, are you aware of the possible
12 conflicts that may arise in connection with
13 Mr. Chester's joint representation of you and his other
14 clients in this proceeding and investigation?

15 A. I am.

16 Q. Do you still wish to be represented by
17 Mr. Chester and his law firm?

18 A. I do.

19 Q. Our court reporter will go off the record at
20 my direction. If you or Mr. Chester would like to go
21 off the record, please tell me, and I will try to
22 accommodate you. My only request in that regard is
23 that if a question is pending, that you go ahead and
24 answer it, and then we can go off the record. Will
25 that be acceptable to you?

1 A. That is.

2 Q. Our court reporter will note for the record
3 each time you consult with Mr. Chester before
4 answering. This is done to ensure an accurate record.

5 Since your testimony is being recorded by a
6 reporter, please respond verbally, as opposed to
7 nodding or shaking your head. Also, let me finish
8 asking a question before you answer; and, likewise, I
9 will try not to ask another question or speak while you
10 are answering a question. And that way we won't have
11 two people speaking at once, which makes it very
12 difficult for the court reporter.

13 If you don't hear a question or don't
14 understand a question, will you say so?

15 A. Yes.

16 Q. And if you do, then either the court reporter
17 will repeat the question or I will repeat it or try to
18 explain the question further.

19 You're under oath, so any false statements
20 you may make may be criminally prosecuted as perjury.
21 Do you understand what I've said to you?

22 A. Yes.

23 Q. Are you on any medication today or under any
24 physical disability that might interfere with your
25 ability to answer questions?

1 A. I am not.

2 Q. Please state your full name.

3 A. William Andrew Smith.

4 Q. Have you ever used any other name?

5 A. Yes.

6 Q. What name is that?

7 A. Andy Smith.

8 Q. Any other name besides Andy Smith?

9 A. No.

10 Q. What is your home address?

11 A. [REDACTED], Arizona,

12 [REDACTED].

13 Q. And what is your home telephone number,

14 please?

15 A. I don't have one. Sorry.

16 Q. What is your cell phone number?

17 A. [REDACTED]-[REDACTED]-[REDACTED].

18 Q. How long have you resided at the residence

19 at -- did you say [REDACTED]?

20 A. Two and a half years.

21 Q. Prior to that residence, where did you live

22 previously?

23 A. Address?

24 Q. Yes, please.

25 A. [REDACTED], [REDACTED],

1 Arizona, [REDACTED].

2 Q. And how long did you reside at that address?

3 A. About seven years.

4 Q. Please state your work history for the past
5 15 years.

6 A. Smith & Cox for the last ten years, and prior
7 to that Senior Planners, I guess was the name of the
8 group.

9 Q. Where was Senior Planners?

10 A. Kokomo, Indiana.

11 Q. And what date did you stop working at Senior
12 Planners in Kokomo, Indiana?

13 A. July of 2007.

14 Q. When did you move to Arizona?

15 A. July of 2007.

16 Q. Please state your educational history from
17 high school forward.

18 A. High school is it.

19 Q. Okay. Any community college or semesters at
20 a college or university?

21 A. No.

22 Q. What is your occupation?

23 A. I am an investment advisor representative.

24 Q. And you are licensed by the Arizona

25 Corporation Commission as such, correct?

1 A. That's correct.

2 Q. Are you licensed as an investment advisor
3 representative by any other jurisdictions?

4 A. No.

5 Q. Are you currently employed at Smith & Cox?

6 A. Yes.

7 Q. Other than your investment advisor
8 representative license and I assume a driver's license,
9 do you have any other State licenses?

10 A. No.

11 Q. So not insurance?

12 A. No.

13 Q. Not real estate?

14 A. No.

15 Q. Have you ever been the subject of any
16 investigation -- no, skip that. Sorry.

17 Have you ever filed for bankruptcy?

18 A. Yes.

19 Q. When and where?

20 A. I don't recall. Indiana.

21 Q. Indiana. Do you recall, was it 10 years ago,
22 20 years ago?

23 A. 20 years ago.

24 Q. What Chapter did you file under?

25 A. 13.

1 Q. And what was the result of that proceeding?

2 A. I don't understand the question.

3 Q. What was the outcome from your bankruptcy?

4 Were you able to reorganize and --

5 A. Yes.

6 Q. I assume it was completed as a Chapter 13 and
7 not dismissed or converted?

8 A. I believe that's correct.

9 Q. Are you an officer or director of any
10 corporation?

11 A. Yes.

12 Q. Which corporation or corporations? What's
13 the name?

14 A. Would that include an LLC?

15 Q. I'll ask about the LLCs separately.

16 A. Then the answer is no.

17 Q. You're a member of at least one LLC, right?

18 A. That's correct.

19 Q. Smith & Cox, LLC?

20 A. That's correct.

21 Q. Are you a member of any other limited
22 liability companies?

23 A. Yes.

24 Q. Which ones?

25 A. Preferred Resource Group.

1 Q. And what is your position with Preferred
2 Resource Group? Are you a member manager? Can you
3 tell me a little bit about what that is?

4 A. Member manager.

5 Q. And what is the business of Preferred
6 Resource Group?

7 A. It was where most of the insurance money
8 flows in there at the time when we moved out here.

9 Q. Let me back up. At Senior Planners Group,
10 was that -- what kind of firm was that? What was the
11 business?

12 A. Insurance.

13 Q. It was insurance.

14 A. Correct.

15 Q. And so I take it you were licensed by the
16 State of Indiana as an insurance producer?

17 A. That's correct.

18 Q. But when you moved to Arizona, you didn't --
19 or did you or did you not, did you continue your
20 insurance business?

21 A. Yes.

22 Q. In Arizona or servicing clients back in
23 Indiana?

24 A. Both.

25 Q. Were you licensed in Arizona at some point as

1 an insurance agent?

2 A. Yes.

3 Q. When was that?

4 A. I believe '07 to '09.

5 Q. And what happened in '09? Did you let your
6 license expire?

7 A. I did.

8 Q. And you haven't renewed it, correct?

9 A. That's correct.

10 Q. Is Preferred Resource Group still an active
11 business entity?

12 A. Yes.

13 Q. And what is its current business?

14 A. It's more of a conduit firm for receiving
15 proceeds from insurance proceeds.

16 Q. When you say receiving proceeds from
17 insurance proceeds, can you describe that a little bit,
18 a little bit more? I'm trying to understand what that
19 means.

20 A. Commissions from insurance companies go into
21 that.

22 Q. Are the commissions from products that you
23 sold in 2009 or earlier?

24 A. Yes.

25 Q. Are there any commissions that you're

1 receiving for products or insurance products that you
2 sold after 2009?

3 A. Not from me.

4 Q. Who are the other members of Preferred
5 Resource Group?

6 A. I believe Chris Cox, my wife, and Beth Cox,
7 Kim Smith and Beth Cox, I believe.

8 Q. Do you know what the state of formation is
9 for Preferred Resource Group? Is it Arizona, is it
10 Indiana, is it someplace else?

11 A. Arizona.

12 Q. Did you work with -- was your wife an
13 insurance producer in Indiana?

14 A. No.

15 Q. Is she an insurance producer in Arizona?

16 A. No.

17 Q. Your wife isn't generating or isn't the
18 source of any commissions that Preferred Resource Group
19 is receiving, is she?

20 A. No.

21 Q. Is Mr. Cox a licensed insurance agent?

22 A. Yes.

23 Q. Here in Arizona?

24 A. That's correct.

25 Q. Did you work with Mr. Cox in Indiana?

1 A. No, I didn't.

2 Q. Where did you meet Mr. Cox?

3 A. In Indianapolis, Indiana.

4 Q. Approximately what year?

5 A. 2006.

6 Q. How did you come to be in business with
7 Mr. Cox in Arizona?

8 A. Mutual relationship.

9 Q. What does that mean?

10 A. We had a mutual relationship with another
11 group that we did work with at the time.

12 Q. And what group was that?

13 A. I don't recall the name of it.

14 Q. Was that group here in Arizona or in Indiana
15 or someplace else?

16 A. It was in Indiana.

17 Q. So I'll ask you again, how did you come to
18 work in Arizona or how did you come to be in business
19 in Arizona with Mr. Cox?

20 A. The weather.

21 Q. The weather brought you together?

22 A. Yeah.

23 Q. Okay.

24 A. Except for today. It's hot. Winter weather,
25 to give you more of a description, I guess.

1 Q. Okay. Well, I think I'm starting to get the
2 picture, and I think I understand it.

3 A. Okay.

4 Q. So I asked you earlier are you an officer or
5 director of any corporation, and we've kind of narrowed
6 that. You're not an officer or director of any
7 corporation, but you've identified Preferred Resource
8 Group, LLC as an entity of which you're a member
9 manager. I understand you're a member manager of
10 Smith & Cox, LLC.

11 Are you a member manager of any other limited
12 liability company other than the two we've just spoken
13 about?

14 A. Yes.

15 Q. What other LLC or LLCs are you a member
16 manager of?

17 A. Smith & Cox and Associates.

18 Q. What is Smith & Cox -- what is the business
19 of Smith & Cox and Associates?

20 A. It's where our payroll for our firm is paid
21 out of.

22 Q. Is that the extent of the business of that
23 LLC?

24 A. That is the extent.

25 Q. What's the reason for paying payroll for

1 Smith & Cox, LLC out of a separate limited liability
2 company, namely, Smith & Cox and Associates?

3 A. Our tax guy said so.

4 Q. Okay. So other than Smith & Cox, limited
5 liability -- LLC, Smith & Cox, LLC, Preferred Resource
6 Group, LLC and Smith & Cox and Associates, LLC, are you
7 a member of any other limited liability company?

8 A. No.

9 Q. Are you connected to any business other than
10 the three limited liability companies we just spoke
11 about?

12 A. I am not.

13 Q. Have you ever been convicted of a crime other
14 than a minor traffic offense?

15 A. No.

16 Q. Have you ever been arrested?

17 A. Yes.

18 Q. For what?

19 A. No. Sorry. Well, I meant a minor traffic
20 violation or something, so no.

21 Q. You've never been put in handcuffs --

22 A. No.

23 Q. -- and taken to the station?

24 MR. CHESTER: Slow down.

25 THE WITNESS: Well, I'll correct this.

1 I had an un -- when I was -- 40 years ago, 17, I didn't
2 pay a ticket and they handcuffed me.

3 BY MR. BURGESS:

4 Q. That was 40 years ago?

5 A. 40 years ago.

6 Q. We're done talking about that.

7 Have you ever been indicted?

8 A. No.

9 Q. Have you ever been a defendant in a civil
10 lawsuit?

11 A. I believe so.

12 Q. What lawsuit or lawsuits are you thinking
13 about?

14 A. A previous situation in Indiana.

15 Q. Okay.

16 MR. BURGESS: Let's mark this as
17 Exhibit 1.

18 (EUO Exhibit 1 was marked for
19 identification.)

20 BY MR. BURGESS:

21 Q. Mr. Smith, I've just handed you what's been
22 marked as Exhibit 1 to your examination under oath. Is
23 this the Form ADV Part 2 disclosure brochure for
24 Smith & Cox updated April 7th, 2016?

25 A. It appears to be, yes.

1 Q. You can look through it and make sure it is
2 what I just described it to be. I would like to know
3 if it's something different than what I just described
4 it to be.

5 If I direct your attention to --
6 unfortunately, there's no page numbers on this. If you
7 go back, it looks like it's about three pages from the
8 end of the document, there is, under Item 19,
9 Requirements for State-Registered Advisors, at the
10 bottom of that page there's a heading for Customer
11 Dispute. Do you see that?

12 A. Uh-huh. Yes.

13 Q. Okay. And it describes that in August 2006 a
14 customer filed suit against you alleging that universal
15 lease agreements the customer purchased from you were
16 unregistered securities, and the customer claimed
17 damages of \$93,000 and change; is that right?

18 A. That's correct.

19 Q. Is that the lawsuit that you were referring
20 to?

21 A. Yes.

22 Q. On the next page, in the last sentence
23 describing that lawsuit, it states, quote, On
24 November 30th, 2006, Mr. Smith was ordered to pay
25 \$93,455.72 in monetary compensation to the claimant,

1 closed quote.

2 Is that an accurate statement?

3 A. It appears to be, yes.

4 Q. How were you ordered to pay the \$93,455? Was
5 it a judgment?

6 A. Yes.

7 Q. Did you pay the judgment?

8 A. I'm still paying it.

9 Q. You're still paying the judgment, okay.

10 A. Correct.

11 Q. So the judgment is not entirely satisfied?

12 A. That's correct.

13 Q. Approximately how much do you still owe on
14 that judgment?

15 A. I don't -- I don't know.

16 Q. Ballpark?

17 A. I don't know.

18 Q. When was the last time you made a payment on
19 that judgment?

20 A. April 20th.

21 Q. Of this year?

22 A. Of this year.

23 Q. Do you make monthly payments on the judgment?

24 A. That's correct.

25 Q. In what amount, approximately, was your

1 payment in April of 2018 on that judgment?

2 A. \$400.

3 Q. Is that -- are you on some kind of a payment
4 plan for that judgment?

5 A. That's correct.

6 Q. And to whom do you pay the judgment?

7 A. Martin Fletcher & Associates.

8 Q. And who or what is Martin Fletcher &
9 Associates?

10 A. A law firm.

11 Q. Where?

12 A. Fort Wayne, Indiana.

13 Q. And how long have you been -- are your
14 monthly payments \$400 a month?

15 A. That's correct.

16 Q. And how long have you been paying \$400 a
17 month on the judgment?

18 A. I believe 10 years, 12 years.

19 It should be right here.

20 Q. I'm sorry, you said it should be right here?

21 MR. CHESTER: No, he's talking to me,
22 pointing it out.

23 MR. BURGESS: Ah.

24 BY MR. BURGESS:

25 Q. And who was the plaintiff in this lawsuit

1 that resulted in the \$93,000 judgment against you?

2 A. Bonnie Disinger.

3 Q. Do you know whether Ms. Disinger is still
4 alive?

5 A. I do.

6 Q. Is she?

7 A. Yes.

8 Q. Other than Ms. Disinger's lawsuit, have you
9 been a defendant in any other civil lawsuits?

10 A. Not to my knowledge.

11 Q. Have you ever been the subject of an
12 investigation by any government agency, other than the
13 Corporation Commission?

14 A. I believe no.

15 Let me back up. On the ADV Item 9, I don't
16 know if that would be considered -- yeah, I guess it
17 would be. Department of Insurance on the same matter.

18 Q. Involving Ms. Disinger?

19 A. Correct.

20 No, this was another one. I'm sorry.

21 Q. Oh.

22 A. Yeah.

23 MR. CHESTER: Are you okay?

24 THE WITNESS: Yeah.

25 MR. CHESTER: Take your time.

1 BY MR. BURGESS:

2 Q. So looking at Item 9 on Exhibit 1, your Form
3 ADV Part 2, describes a regulatory event as follows:
4 On August 21st, 2008, Andy Smith entered into an
5 Acceptance, Waiver and Consent with the Indiana
6 Commissioner of Insurance.

7 And this matter resulted from the sale of
8 universal leases, correct?

9 A. Yes.

10 Q. And this paragraph states, quote, Mr. Smith
11 was ordered to pay \$30,000 in restitution to the client
12 who purchased the product from him and pay a \$500 fine
13 to the State of Indiana, closed quote.

14 And it states that -- the last sentence
15 states, "Mr. Smith fulfilled the requirements of the
16 Indiana Commissioner of Insurance on February 20th,
17 2011."

18 So I understand from that statement -- well,
19 let me ask you. Did you pay the \$30,000 restitution to
20 the client?

21 A. Yes, I did.

22 Q. And you paid the \$500 fine to the State of
23 Indiana?

24 A. That's correct.

25 Q. Other than this matter that we just talked

1 about in Item 9, to your knowledge, have you ever been
2 the subject of an investigation by a government agency?

3 A. No.

4 Q. What's your date of birth?

5 A. [REDACTED].

6 Q. And where were you born? What's your place
7 of birth?

8 A. Pasadena, California.

9 Q. What's your marital status?

10 A. I am married.

11 Q. And you're married to Kimberly Ann Smith?

12 A. That's correct.

13 Q. How long have you been married to your wife?

14 A. 37 years.

15 MR. CHESTER: A little hesitation.

16 THE WITNESS: I want to be right. I
17 want to be right.

18 BY MR. BURGESS:

19 Q. Yeah, we appreciate that.

20 A. Yeah.

21 Q. And I'm sure other people do as well.

22 A. Yeah. Let me make sure that the math is
23 right. It will be 37 years this year.

24 Q. Congratulations.

25 A. November 28th. I want to make sure I got the

1 date right too. Thank you.

2 Q. Do you have any children?

3 A. I do.

4 Q. What are their names and ages, please?

5 A. Danylle Hanley, D-A-N-Y-L-L-E, Hanley,
6 H-A-N-L-E-Y.

7 Q. And how old is Danylle?

8 A. Danylle was born in 1989. She's 29.

9 Q. And what state does she reside in?

10 A. Indiana.

11 Q. Indiana. Any other children?

12 A. Yes.

13 Q. What are their names?

14 A. Samantha Taylor Smith.

15 Q. And how old is Samantha Taylor Smith?

16 A. Samantha Taylor Smith is 27 years old.

17 Q. And where does she reside?

18 A. Tucson, Arizona.

19 Q. Any other children?

20 A. Yes, I do. They just keep coming. Austin
21 James Smith.

22 Q. Austin James Smith, and how old is Austin
23 James Smith?

24 A. 25.

25 Q. And where does he reside?

1 A. Tucson, Arizona.

2 Q. Any other children?

3 A. I don't believe so.

4 Q. We'll leave it at that.

5 A. Thank you. There should not be.

6 Q. Where do you hold bank accounts?

7 A. Chase.

8 Q. Any other banks?

9 A. No.

10 Q. Who are the owners of Smith & Cox, LLC?

11 A. Myself and Chris.

12 Q. What are your respective percentages of
13 ownership?

14 A. 50/50.

15 Q. How is Smith & Cox managed? I'm trying to
16 understand the management structure.

17 A. I don't understand the question.

18 Q. Are you both member managers?

19 A. That's correct.

20 Q. And do you share your management
21 responsibilities roughly equally?

22 A. I would say yes. There may be an argument
23 there, but for the most part.

24 Q. Since September -- from September 2013 to the
25 present you've been a managing member of Smith & Cox,

1 LLC, correct?

2 A. That's correct.

3 Q. And so has Mr. Cox, correct?

4 A. That is correct.

5 Q. What other role or roles do you have at
6 Smith & Cox in terms of running the business or
7 managing the business?

8 A. I don't understand the question.

9 Q. What functions do you perform for the LLC?

10 A. We just run the business. I'm the investment
11 advisor. We run the business together.

12 Q. Mr. Cox is no longer an investment advisor
13 representative, is he?

14 A. That's correct.

15 Q. So when you say you're the investment
16 advisor, I think what I understand you saying, and
17 please correct me if I'm off in any way, is that you
18 are the licensed investment advisor representative for
19 Smith & Cox, LLC, which is a registered investment
20 advisory firm; is that accurate?

21 A. That is correct.

22 Q. Who is the compliance officer for the
23 investment advisory firm?

24 A. Well, Elliott Smith.

25 Q. Who is Elliott Smith?

- 1 A. The compliance officer for us.
- 2 Q. Is he an employee of Smith & Cox, LLC?
- 3 A. He is not.
- 4 Q. Who does Elliott Smith work for?
- 5 A. He works for Elliott Smith.
- 6 Q. He's a sole proprietor?
- 7 A. That is my understanding.
- 8 Q. Where is Elliott Smith located?
- 9 A. In Phoenix, Arizona.
- 10 Q. What does Mr. Smith do as the chief
- 11 compliance officer for Smith & Cox, LLC?
- 12 A. Well, he updates the ADV when needed.
- 13 Q. Does he do anything else for Smith & Cox,
- 14 LLC?
- 15 A. He helped with our registration.
- 16 Q. That registration occurred in between January
- 17 and July 2009, correct?
- 18 A. I believe that's accurate.
- 19 Q. And Mr. Elliott Smith assisted you with that
- 20 registration, is your testimony, right?
- 21 A. That's what I believe to be accurate.
- 22 Q. So other than -- has -- other than updating
- 23 Smith & Cox, LLC's Form ADV when needed since, say, mid
- 24 2009, what other work, if any, has Elliott Smith
- 25 performed for Smith & Cox?

1 A. He gave advice on paperwork, files,
2 et cetera.

3 Q. Can you elaborate?

4 A. He gave advice on how to set up the files.
5 I'm not sure what else. You know, the structure and
6 process of what the thing -- how things should look.

7 Q. Has Elliott Smith looked at or evaluated or
8 analyzed investment products that Smith & Cox offers?

9 A. Yes.

10 Q. Has Elliott Smith looked at the investments
11 or the type of investments at issue in this proceeding;
12 namely, the sale of payments from military retirement
13 or military disability benefits?

14 A. Yes, he has.

15 Q. And did he provide his evaluation to you on
16 those products?

17 A. Yes, he did.

18 Q. How did he do so?

19 A. Through conference calls with counsel and
20 what I'll call the company.

21 Q. Who is the counsel and who is the company?

22 A. The counsel was Upstate Law Group.

23 Q. And who is the company?

24 A. The company at that time was Strategic
25 Marketing Innovators.

1 Q. Did Mr. Smith, did Mr. Elliott Smith, provide
2 any written opinions or analyses with respect to these
3 products?

4 A. I don't recall, but he did offer an opinion.

5 Q. And what was his opinion?

6 A. His opinion was that he believed it was not a
7 security.

8 Q. Did he elaborate why?

9 A. I don't recall the specifics of the
10 conversation.

11 Q. Do you recall approximately how many
12 conference calls you had with Mr. Smith and -- well,
13 let's talk about the conference calls.

14 How many conference calls do you recall
15 having with Mr. Smith about these -- can we call them
16 pension products?

17 A. Sure.

18 Q. Can we agree on a shorthand term?

19 A. (Witness nodded.)

20 Q. Okay. How many conference calls did you have
21 with Elliott Smith about these pension product
22 investments?

23 A. I was a part of, to my best knowledge, two or
24 three.

25 Q. And approximately when did these conference

1 calls occur?

2 A. I don't recall.

3 Q. Did they occur before you started -- before
4 Smith & Cox started offering these pension product
5 investments?

6 A. Yes.

7 Q. That will help us narrow down the time frame.

8 A. Yeah.

9 Q. Because I can represent to you, and we can
10 talk about it a little bit more in detail later, but
11 I'll represent to you that based on the records that
12 you have produced to the Division, which we appreciate,
13 back in October 2016, it looks like from those records
14 that the earliest sale of one of these products was in
15 October 2013. And it looks like they ran through, the
16 last one, at least that we're looking at in this
17 proceeding so far, is in November of 2015.

18 So there's about a two-year, one month window
19 of sales. I'm not going to hold you to the exact
20 chronology of that, but in terms of ballpark, does that
21 sound about right?

22 A. To the best of my recollection, that sounds
23 about right.

24 Q. Okay. So you recall two, possibly three,
25 conference calls with Elliott Smith prior to, say,

1 October 2013, when we think the first sale of one of
2 these products occurred?

3 A. Yes.

4 Q. And I'm going to assume, but ask you to
5 correct me, that the conference calls probably happened
6 in 2013, and probably within 2013, closer to when you
7 started selling these products than much earlier in
8 2013; is that -- have I -- is my assumption roughly
9 correct?

10 A. I believe that's relatively correct.

11 Q. In terms of who was on the conference calls,
12 you mentioned earlier that counsel, namely, Upstate Law
13 Group, and Strategic Marketing Innovators or a
14 representative of Strategic Marketing Innovators was on
15 at least one call. Were they on, to the best of your
16 recollection, each of these two or three calls?

17 A. I believe that they were on all the calls.

18 Q. Okay. That's what I was trying to figure
19 out.

20 A. Yeah.

21 Q. Did you ever have a call with Elliott Smith
22 about these products and the only person on the call or
23 the only persons on the call were yourself and
24 Mr. Smith?

25 A. I believe that is very possible, yes.

1 Q. Okay. But do you have any specific
2 recollection of such a call?

3 A. I don't have a specific recollection.

4 Q. How did Smith & Cox, LLC come to engage
5 Elliott Smith as its compliance officer? How did you
6 come in contact with him?

7 A. I do not know.

8 Q. Do you know what qualifies him to act as a
9 compliance officer for an investment advisory firm?

10 A. My understanding is he was a chief compliance
11 officer for a Schwab company at one point and decided
12 to branch off on his own, is what I recall.

13 Q. Do you know whether Mr. Elliott Smith has any
14 expertise in determining what is and what is not a
15 security?

16 A. I have no reason to believe he doesn't.

17 Q. What reason do you have to believe that he
18 does?

19 A. I would think just being -- working with
20 Charles Schwab and his experience would qualify him.

21 Q. Okay. Anything else?

22 A. No.

23 Q. During the conference calls with Elliott
24 Smith regarding these products, you mentioned that
25 counsel was on the phone, Upstate Law Group. Upstate

1 Law Group is a law firm in South Carolina, correct?

2 A. That's correct.

3 Q. Who were they counsel for on these calls?

4 A. I don't know.

5 Q. Did they represent Smith & Cox, LLC?

6 A. They did not represent Smith & Cox.

7 Q. Okay. So they were -- so Upstate Law Group
8 was not representing your or your firm's interests
9 during these calls?

10 A. That's correct.

11 Q. Do you know whose interests they were
12 representing?

13 A. No, I don't.

14 Q. You mentioned that Strategic Marketing
15 Innovators was also on the call. I understand that
16 firm or entity to be a distributor of these types of
17 investments; is that correct?

18 A. That is my understanding, yes.

19 Q. Who from Strategic Marketing Innovators was
20 on the call or calls that they participated in?

21 A. Darren Bodenhamer and Brad Churaroska, which
22 is my best take on how to say the name.

23 Q. Where is -- do you know where Strategic
24 Marketing Innovators is located?

25 A. My understanding is -- well, they don't exist

1 anymore, but at the time, I believe Gainesville, Texas.

2 Q. What can you tell me about the fact that
3 Strategic Marketing Innovators no longer exists?
4 What's your basis of understanding for that?

5 A. I really don't know.

6 Q. Well, how do you know that they no longer
7 exist?

8 A. Because another entity basically replaced
9 them.

10 Q. And which entity was that?

11 A. Life Funding Options.

12 Q. When did Life Funding Options replace
13 Strategic Marketing Innovators?

14 A. I don't -- I don't know.

15 Q. Was it during the roughly two-year window
16 when Smith & Cox was selling these types of
17 investments?

18 A. I'm not really sure.

19 Q. Where is Life Funding Options located; do you
20 know?

21 A. I don't really know.

22 Q. Have you communicated with any
23 representatives of Life Funding Options?

24 A. I have.

25 Q. Who have you communicated with?

1 A. Brad --

2 Q. Churaroska? I messed that up too. Let's
3 just call him Brad.

4 A. Thank you.

5 Q. Okay. We'll know who we're talking about.

6 A. Geez.

7 Q. So Brad is no longer associated with
8 Strategic Marketing Innovators, but he, to the best of
9 your knowledge, has been associated more currently with
10 Life Funding Options; is that correct?

11 A. That is my understanding.

12 MR. CHESTER: Counsel, when you get a
13 chance, a restroom break would be appreciated. Is this
14 a good time?

15 MR. BURGESS: Yeah, let's take that
16 right now.

17 (A recess was taken from 10:56 a.m. to
18 11:05 a.m.)

19 MR. BURGESS: We can go back on the
20 record.

21 BY MR. BURGESS:

22 Q. All right, Mr. Cox -- I'm sorry, Mr. Smith,
23 we're back on the record.

24 Has anybody else other than Elliott Smith
25 acted as chief compliance officer for Smith & Cox, LLC?

1 A. Not that I know of, no.

2 Q. Have you ever acted as chief compliance
3 officer for Smith & Cox, LLC?

4 A. I don't think so.

5 Q. Have you ever acted as or do you act as
6 principal executive officer of Smith & Cox, LLC?

7 A. I'm not sure what that means.

8 Q. Please take a look again at Exhibit 1, on the
9 fourth page, under Item 4 describing the advisory
10 business of Smith & Cox, LLC. The second paragraph
11 says, "Smith & Cox is a limited liability company owned
12 by W. Andrew (Andy) Smith and Christopher S. (Chris)
13 Cox. Andy Smith is also the firm's Managing
14 Minicomember and principal executive officer."

15 Did I read that correctly?

16 A. No, you didn't.

17 Q. I said Minicomember and it says Mincomember
18 or meember. Let me spell that for the record.
19 M-I-N-C-O-M-E-E-M-B-E-R.

20 Other than mispronouncing that word twice,
21 did I read that, those two sentences, correctly?

22 A. That's correct.

23 Q. I'm guessing that the word Mincomeember is a
24 typo or some new exotic corporate term I haven't heard
25 of yet, but you can explain it to me.

1 A. I can't explain it to you.

2 Q. Okay. What did he mean to say by that?

3 Managing member?

4 A. I would think so.

5 Q. Okay. But then the term principal executive
6 officer is also described as one of your roles in that
7 sentence, right?

8 A. That's what it says, yes.

9 Q. Okay. What is your role as principal
10 executive officer?

11 A. To me, it's a managing member of an LLC;
12 maybe a neat name, title. That's what it means to me,
13 I suppose.

14 Q. Okay. Did you author this or prepare this
15 Exhibit 1, Form ADV Part 2A disclosure brochure?

16 A. I did not.

17 Q. Who did? Do you know?

18 A. Yes, I do.

19 Q. Who was it?

20 A. Elliott Smith.

21 Q. Did you review this Form ADV Part 2A before
22 it was finalized and filed?

23 A. I'm sure I looked at it, yes.

24 Q. To the best of your knowledge, was it
25 accurate, or is it accurate?

1 A. To the best of my knowledge, it seems to be
2 accurate.

3 Q. Staying on the same page, under the heading
4 Financial Planning and Consultation Services, the first
5 sentence states, quote, Smith & Cox provides Financial
6 Planning and Consultation Services. Financial Planning
7 Services can be tailored for clients and can cover such
8 issues as research; investment analysis; portfolio
9 reviews; asset allocation; general tax issues; general
10 estate planning issues; retirement planning; education
11 funding; risk assessment; goal setting; business
12 benefit issues; business owner issues; cash flow;
13 general issues pertaining to marriage or divorce, or
14 other needs that are identified by the client.

15 Did I read that correctly?

16 A. You did a good job, yes.

17 Q. So I want to focus in on what tax issues does
18 Smith & Cox offer services on to its clients?

19 A. From a general tax issue standpoint?

20 Q. Yes.

21 A. Simple tax deferral, nontax deferral, taxable
22 IRA planning, that kind of information.

23 Q. Okay. Does Smith & Cox, LLC provide advice
24 to clients about income tax issues?

25 A. No, we don't.

1 Q. Does it prepare tax returns?

2 A. No.

3 Q. Directing your attention to the bottom of the
4 page, under Investment Advisory and Monitoring
5 Services, the second sentence under that header says,
6 in part, "WWM," and that's all caps, "may make
7 recommendations of investments available with a reduced
8 or no sales charge," and then it goes on.

9 My question is, what is WWM?

10 A. I don't know.

11 Q. Okay. What functions does Mr. Cox perform at
12 Smith & Cox, LLC?

13 A. Insurance-related items.

14 Q. Anything else in terms of services he
15 provides to clients? Is it just insurance?

16 A. That's correct.

17 Q. Other than yourself, does Smith & Cox, LLC
18 have any other investment advisor representatives?

19 A. No.

20 MR. BURGESS: Let's mark this as
21 Exhibit 2.

22 (EUO Exhibit 2 was marked for
23 identification.)

24 (EUO Exhibit 3 was marked for
25 identification.)

1 BY MR. BURGESS:

2 Q. Mr. Smith, I've just handed you what's been
3 marked as Exhibit 2, which is an October 3rd, 2016
4 letter from the Securities Division to you and Smith &
5 Cox, LLC requesting certain documents. And then I've
6 also handed you what's been marked as Exhibit No. 3.
7 Can you please identify what Exhibit No. 3 is?

8 A. An answer key for a document request that I
9 provided.

10 Q. Okay. Did you prepare Exhibit No. 3?

11 A. I did.

12 Q. And it's fair to say that Exhibit No. 3
13 corresponds to the categories set forth in the letter
14 marked as Exhibit No. 2, correct?

15 A. It does.

16 Q. I would just like to take a minute or two and
17 briefly go through the categories of documents that
18 were requested in Exhibit No. 2 and then the responses
19 that you provided in Exhibit No. 3, okay?

20 A. Okay.

21 Q. Okay. Exhibit No. 2, the first category
22 asked for a list of all individuals or entities who
23 have purchased a pension stream investment or
24 structured cash flow product sold by or through
25 Mr. Smith or Smith & Cox, LLC, the firm, correct?

1 A. Yes.

2 Q. And your response on Exhibit No. 3 is that
3 the requested documents you were providing on a thumb
4 drive, correct?

5 A. Yes.

6 Q. In response to that first category, correct?

7 A. Yes.

8 MR. BURGESS: Let's mark this as
9 Exhibit 4.

10 (An off-the-record discussion ensued.)

11 (EUO Exhibit 4 was marked for
12 identification.)

13 BY MR. BURGESS:

14 Q. Do you recognize Exhibit No. 4, Mr. Smith?

15 A. Yes.

16 Q. Can you describe what it is, please?

17 A. It's a list of the structured income clients.

18 Q. Is it accurate for me to say that the list of
19 clients on Exhibit No. 4, which is two pages, is the
20 information that you produced that's responsive to
21 Category 1 in Exhibit 2?

22 A. That appears to be correct.

23 Q. All right. Returning to Exhibits 2 and 3, in
24 Exhibit 2 the second category of documents calls for,
25 quote, A list of all of Mr. Smith's and the Firm's

1 investment advisory clients, including client names,
2 addresses, and telephone numbers.

3 And then in Exhibit 3 you again stated that
4 the information requested responsive to that second
5 category is provided on the thumb drive, correct?

6 A. That's what it says, yes.

7 Q. Returning to Exhibit 2, the third category of
8 documents we requested were, quote, Copies of all
9 client account statements, including any account
10 statements generated by Mr. Smith or the Firm, closed
11 quote.

12 And on Exhibit No. 3 your response indicates
13 not applicable, correct?

14 A. Correct.

15 Q. So I take it that you had no -- that Smith &
16 Cox had no responsive documents to Category No. 3?

17 A. That's what I understand, yes.

18 Q. Okay. Returning to Exhibit 2, the fourth
19 category calls for or called for copies of all account
20 statements furnished to individuals and to entities
21 that have purchased a pension stream investment or
22 structured cash flow product.

23 And then on Exhibit No. 3 your response was,
24 again, not applicable, correct?

25 A. That's my understanding, yes.

1 Q. Okay. So, in other words, to the best of
2 your knowledge and information, Smith & Cox had no
3 documents that responded, were responsive to Category
4 No. 4, correct?

5 A. That's correct, in my best -- to my
6 understanding, yes.

7 Q. Okay. Returning to Exhibit 2, the fifth
8 category called for a list of all financial products
9 offered for sale and sold by Mr. Smith or the firm.

10 And on Exhibit No. 3 you responded that
11 whatever documents the firm had or you had were again
12 provided on the thumb drive, correct?

13 A. That's correct.

14 Q. Returning to Exhibit 2, the sixth category
15 called for copies of all selling agreements entered
16 into by Mr. Smith or the firm.

17 And on Exhibit 3 you again indicated that
18 what documents or what documents you had were again
19 being provided on the thumb drive, correct?

20 A. Yes.

21 Q. Category No. 7 on Exhibit No. 2 called for
22 copies of documentation evidencing your or your firm's
23 due diligence undertakings with respect to the pension
24 stream investment or structured cash flow products,
25 correct?

1 A. Yes.

2 Q. And in Exhibit No. 3 you responded that you
3 were providing the documents responsive to that seventh
4 category also on the thumb drive, correct?

5 A. Yes.

6 Q. Returning to Exhibit 2, eighth category of
7 documents called for copies of documentation evidencing
8 Mr. Smith's or the firm's suitability assessment
9 efforts undertaken for each individual and entity that
10 purchased a pension stream investment or structured
11 cash flow product.

12 And on Exhibit 3 you again provided that
13 documents responsive to that eighth category of
14 documents were also being provided on the thumb drive,
15 correct?

16 A. Yes.

17 Q. Returning to Exhibit 2, the ninth category of
18 documents requested was copies of any and all offering
19 documents, including all attachments, exhibits,
20 amendments and supplements, furnished to purchasers of
21 pension stream investments or structured cash flow
22 products.

23 And on Exhibit No. 3, in response to that
24 ninth request, you again indicated that you were
25 providing the responsive documents on the thumb drive,

1 correct?

2 A. Yes.

3 Q. Returning to Exhibit No. 2, the tenth
4 category requested were copies of any and all
5 documentation relating to purchasers entering into
6 contracts called, quote, Option to Purchase Defaulted
7 Structured Asset Agreements, closed quotes.

8 And on Exhibit No. 3 you indicated or stated
9 that the responsive documents to that tenth request you
10 were also producing on that thumb drive, correct?

11 A. Correct.

12 Q. The eleventh -- on Exhibit No. 2 the eleventh
13 category of documents requested were any and all
14 documentation showing any commissions or other
15 remuneration received by Mr. Smith or the firm in
16 connection with the sale of pension stream investments
17 or structured cash flow products.

18 And on Exhibit No. 3 you responded that the
19 responsive documents to Category 11 were also being
20 provided on the thumb drive, right?

21 A. Yes.

22 Q. Category 12 on Exhibit No. 2 called for
23 copies of any and all contracts or agreements,
24 including all attachments, exhibits, amendments and
25 supplements, between Mr. Smith or his firm and BAIC --

1 that's all caps. -- Inc., a Texas corporation.

2 And on Exhibit No. 3 you indicated not
3 applicable; in other words, no documents, no responsive
4 documents existed in response to Category 12, correct?

5 A. That is correct.

6 Q. Returning to Exhibit 2, Category 13 asked for
7 copies of any and all contracts and agreements,
8 including all attachments, exhibits, amendments and
9 supplements, between Mr. Smith or the firm and SoBell
10 Corp., a Mississippi profit corporation.

11 And on Exhibit No. 3, in response to that
12 Category 13, you again indicated not applicable; in
13 other words, neither you nor Smith & Cox had any
14 responsive documents to that request, correct?

15 A. That's correct.

16 Q. Returning to Exhibit No. 2, Category 14
17 requested copies of any and all contracts, including
18 all attachments, exhibits, amendments and supplements,
19 between Mr. Smith or the firm and Strategic Marketing
20 Innovators, LLC.

21 And on Exhibit No. 3, in response to that
22 Category No. 14, you indicated that any such
23 documents -- or all such documents were being provided
24 on the thumb drive, correct?

25 A. That's correct.

1 Q. And then, finally, in Exhibit No. 2, with
2 respect to Category 15, that category requested copies
3 of any and all contracts and agreements, including all
4 attachments, exhibits, amendments and supplements,
5 between Mr. Smith and the firm -- Mr. Smith or the firm
6 and Performance Arbitrage Company, Inc.

7 And on Exhibit No. 3 you responded that no
8 such documents existed, and so you put not applicable,
9 correct?

10 A. That's correct.

11 Q. And then also on Exhibit 3, you added a
12 paragraph that indicated that you were enclosing a DOL
13 opinion, which I assume means Department of Labor; am I
14 correct?

15 A. Yes.

16 Q. You were enclosing a Department of Labor
17 opinion in regards to this asset from the perspective
18 of the Department of Labor in regards to several ERISA
19 and federal anti-alienation/assignment provisions.

20 And so you provided that on the thumb drive
21 as well, correct?

22 A. That's correct.

23 Q. Are you the authorized custodian of records
24 for Smith & Cox, LLC?

25 A. Custodian of record?

1 Q. Yes. Do you keep the records for Smith &
2 Cox, LLC?

3 A. Some, yes.

4 Q. Okay. Do you have the authority on behalf of
5 Smith & Cox to certify the records that you produced on
6 its behalf?

7 A. I assume so, yes.

8 Q. Okay. I'm going to ask you some somewhat
9 lawyerly questions, but they're designed to establish
10 that -- what I'm trying to establish is that the
11 documents that you produced on the thumb drive were the
12 true and correct copies of records that Smith & Cox
13 has. So I'll just go ahead and ask those questions,
14 but I wanted you to know why I'm doing this exercise.

15 A. Okay.

16 Q. Are the records that you submitted -- and if
17 we go back and look at Exhibit No. 3, I believe it's
18 dated or date-stamped.

19 A. October 28th, 2016.

20 Q. Yeah, okay. So you produced the documents on
21 or about that date, correct?

22 A. That's correct.

23 Q. Are the records that you submitted to the
24 Division on that date true and correct copies of all
25 records under Smith & Cox's possession or control that

1 are responsive to the October 3rd letter directed to
2 you and to Smith & Cox?

3 A. To the best of my ability.

4 Q. Were the records that you submitted prepared
5 or obtained by personnel or representatives of Smith &
6 Cox in the ordinary course of business?

7 A. I'm not sure I understand your question.

8 Q. As a regular business practice, day in/day
9 out, does Smith & Cox prepare records relating to its
10 business, including its clients?

11 A. Yes.

12 Q. Okay. And were the records that you
13 submitted to the Division on October 28th, 2016, were
14 those documents prepared by people at your firm,
15 whether yourself or other employees, in the course of
16 Smith & Cox's ordinary business practices?

17 A. I believe so, yes.

18 Q. Okay. Is it your firm's practice to create
19 business records reflecting transactions or the
20 business that it's conducting at or near the time of
21 those actual transactions?

22 A. That would be typically correct.

23 Q. Okay. And to the best of your knowledge,
24 were the records that you submitted or prepared to the
25 Division in October 2016 prepared by representatives of

1 your firm at or near the time of the business, the
2 transactions, the events reflected in those records?

3 A. To the best of my knowledge, yes.

4 Q. And is it -- does Smith & Cox keep such
5 records in the ordinary course of its business, as part
6 of its regular business practice?

7 A. Yes.

8 Q. Have you -- to the best of your knowledge
9 have you produced all the records that were covered by
10 the Division's letter of October 3rd, 2016?

11 A. I did my best.

12 Q. And we thank you for that.

13 Earlier in your testimony or in our colloquy
14 I represented to you that based on our review of the
15 records that you did produce, which included what I
16 would describe as the client files for the various
17 individuals and clients to whom Smith & Cox sold the
18 pension stream products at issue, based on our review
19 of those client files, we believe that the time frame
20 during which your firm made those sales was
21 October 28th, 2013 through November 17th, 2015.

22 And you said that that sounded, that
23 ballpark, as a ballpark, sounded about right?

24 A. Sounds about right.

25 Q. Okay. To the best of your knowledge, were

1 there any -- did your firm make any other sales of
2 these types of investments outside that, say,
3 October 28th, 2013 to November 17, 2015 time frame?

4 A. I don't believe so.

5 Q. Okay. So to the best of your knowledge,
6 since November 17, 2015, which we believe is the last
7 sale, has Smith & Cox made any other sales of these
8 types of investments?

9 A. No.

10 Q. Why after, say, the end of November 2015 did
11 your firm no longer sell these types of investments?

12 A. I heard about a Texas order, and that's
13 what -- I was done.

14 Q. Just that one Texas order was enough to --

15 A. That was enough.

16 Q. Had you had any problems with the -- had you
17 or had your -- to your knowledge, had any clients had
18 any issues or problems with these investments that they
19 purchased prior to you becoming aware of that Texas
20 order?

21 A. There may have been some defaults at some
22 point.

23 Q. Okay. Did those defaults factor into your
24 decision to stop selling these types of products?

25 A. I'm sure that had a partial reason, yeah.

1 Q. Let's talk about the offerings generally.

2 You tell me if this is accurate: The
3 investments we're talking about involved a transaction
4 where a veteran receiving an income stream from a
5 military retirement or military disability benefits
6 would act as a seller, and the veteran appointed either
7 BAIC or SoBell as his or her agent to sell part of the
8 future payments from that pension or those disability
9 benefits in exchange for a discounted lump sum payment.

10 Is that an accurate summary of --

11 A. No.

12 Q. No?

13 A. No.

14 Q. What's inaccurate about it?

15 A. The BAIC/SoBell relationship.

16 Q. Okay. So in my summary, which you disagree
17 with, I described or stated that the veteran would
18 appoint BAIC or SoBell as his or her agent to sell part
19 of the future income stream. What's inaccurate about
20 that?

21 A. My understanding was that BAIC, and I wasn't
22 really familiar with SoBell, was nothing more than a
23 sourcing representative. They found a seller.

24 Q. Okay.

25 A. And that was their role.

1 Q. So to the best of your knowledge, did BAIC or
2 SoBell assist the seller in the transaction?

3 A. Not to my knowledge, no.

4 Q. Were they appointed as the agent of the
5 seller?

6 A. Not to my knowledge, no.

7 Q. Okay, so let me take another run at this,
8 based on what you've described, and you tell me if I'm
9 accurate.

10 The investments involved a transaction where
11 a veteran receiving an income stream from military
12 retirement pension or military disability benefits
13 would act as a seller, and that person was sourced or
14 located somehow by BAIC or SoBell, and in the
15 transaction the veteran would sell part of the future
16 income payments from the pension stream or disability
17 benefits in exchange for a discounted lump sum. Is
18 that an accurate statement?

19 A. That seems fairly accurate, yes.

20 Q. Okay. And then the veteran/seller was
21 matched with an investor, who would be the buyer,
22 correct?

23 A. That's correct.

24 Q. To purchase the veteran's pension or
25 disability benefits for a specified term, correct?

1 A. That's correct.

2 Q. Okay. How was the veteran, to your
3 knowledge, how was the veteran matched with the buyer?

4 A. I'm not sure I understand the question.

5 Q. Well, I think we just agreed that the
6 veteran, as the seller, was somehow match -- or was
7 matched with an investor, as the buyer, correct?

8 A. Yes.

9 Q. What knowledge do you have as to how that
10 matching occurred?

11 A. I don't have a lot of knowledge to the
12 processes of how the match occurred.

13 Q. What knowledge do you have?

14 A. That a buyer and seller were -- a buyer
15 was -- I'm sorry, a seller was sourced and became
16 available for a buyer match, so to speak.

17 Q. Okay. But you don't know how that match
18 occurred?

19 A. I'm not sure if I understand the matching
20 terminology here, matching.

21 Q. Well, putting the seller together with the
22 buyer.

23 A. I would -- that -- my understanding is that's
24 what Upstate Law Group does.

25 Q. Okay. What's your understanding of how BAIC

1 or SoBell sourced the seller?

2 A. My understanding is there are many companies
3 that advertise for different types of these types of
4 arrangements, and I believe that BAIC and, my
5 understanding, SoBell are -- I'm not sure if they did
6 advertising, but they became like a finder of sellers.

7 Q. Okay. When you had a client who -- and let
8 me ask this: Were the investors to whom your firm sold
9 these types of investments, were they clients of
10 Smith & Cox?

11 A. Already, previously; is that what you're
12 asking?

13 Q. Either previously or did they -- at the time
14 of the transaction, were they clients of your firm?

15 A. Most were not.

16 Q. Most were not. At the time of the
17 transaction, did they become clients of Smith & Cox?

18 A. That would be correct.

19 Q. And what types of clients were they? Were
20 these investment advisory clients?

21 A. Yes.

22 Q. How did your firm know which pensions were
23 available for purchase?

24 A. Through SMI.

25 Q. And how did SMI provide that information?

1 A. I communicated with them, and they basically
2 handled the, in quotes, inventory of sellers, my
3 understanding.

4 Q. Let's say in the time frame I was somebody
5 interested in one of these products because say I knew
6 somebody, my neighbor, who was a client of your firm
7 who had already purchased one of these. Just
8 hypothetical, okay. And I'm giving this hypothetical
9 because I want to understand kind of the process.

10 If I came into your office and said, "Hey,
11 Mr. Smith, you know, my neighbor has one of these. I'm
12 interested," what was the process for me to buy one of
13 these?

14 Did you have an existing inventory that you
15 could show them that you had gotten through SMI, or did
16 the investor say, "I'm interested in putting \$50,000
17 towards one of these. Please go find one"? I mean how
18 did it work? Did you have the -- what came first; kind
19 of the putting the money up or the here's what we have,
20 you know, here are the various ones that we have to
21 offer?

22 A. It was not -- I didn't show any inventory and
23 said this is what we have to offer.

24 Q. You didn't show that?

25 A. I did not.

1 Q. Okay. So can you describe the process for I
2 come into your office and say, "Hey, I've heard about
3 these. Can you tell me more about them?"

4 A. Well, we would do a very extensive
5 fact-finding meeting first to see what their situation
6 is, et cetera. And the idea behind this was to provide
7 an income stream for a period of time, five years or
8 whatever. It's part of what we call an income plan, so
9 to speak, which would include several different tools;
10 maybe an annuity, maybe -- always an investment
11 account, obviously; and based on what the goals are of
12 the particular person that we sat down with.

13 Q. Okay. And how would you explain that one of
14 these types of products might fit into that overall
15 plan?

16 A. Well, I gave them printed material that was
17 provided to me by SMI and explained how the asset
18 worked, and that was my initial discussion, if it was
19 something that they showed interest in.

20 Q. Okay. How did you and your firm first learn
21 about these products?

22 A. Darren Bodenhamer with SMI contacted us.

23 Q. Did you have a relationship with
24 Mr. Bodenhamer prior to him contacting you about these
25 investments?

1 A. No, I didn't.

2 Q. Do you have an understanding of how he came
3 to contact you?

4 A. I think through another friend of mine that
5 he knew and contacted me through him.

6 Q. And who is that; who is your friend?

7 A. A friend in Louisiana.

8 Q. And what's your friend's name?

9 A. Barry.

10 Q. Engolio?

11 A. Engolio.

12 MS. NELSON: Can I ask just one
13 question?

14 MR. BURGESS: Yeah.

15 MS. NELSON: Does Darren Bodenhamer live
16 in Tucson?

17 THE WITNESS: No, he lives in Dallas,
18 Texas.

19 BY MR. BURGESS:

20 Q. Okay. So you believe that Mr. Engolio in
21 Louisiana, that your relationship with him caused
22 Mr. Bodenhamer to reach out to you and contact you
23 about these types of products?

24 A. I -- yes.

25 Q. Okay. So what did -- and approximately when

1 did this occur? Sometime in 2013 or earlier?

2 A. Yeah. Yes.

3 Q. You think sometime in 2013?

4 A. I would, yes.

5 Q. And how did Mr. Bodenhamer reach out; by
6 phone, by letter, by did you have a personal meeting
7 with him?

8 A. He came out to visit us at our office.

9 Q. Okay. And how many meetings with
10 Mr. Bodenhamer did you have before you started offering
11 these products?

12 A. Well, we had one initial meeting
13 face-to-face, and then this is when the compliance
14 discovery, I would say, took place. It was not
15 something that happened very quickly at all.

16 Q. And Elliott Smith was involved or became
17 involved at this point in the discussions?

18 A. That's correct.

19 Q. And what interested you in selling these
20 products?

21 A. It was an alternative to a -- as part of an
22 income plan, a better rate of return than they could
23 get elsewhere.

24 Q. Okay. Anything else?

25 A. No.

1 Q. Does your friend in Louisiana, Mr. Engolio,
2 offer these types of investment products?

3 A. Currently or did he?

4 Q. Did he.

5 A. He did.

6 Q. He did.

7 Do you know anybody else in Arizona who
8 offers or offered these investment products?

9 A. With this particular company or at all?

10 Q. Let's start with this particular company.

11 A. No, I don't know of anybody.

12 Q. What about other people in Arizona who offer
13 these types of products, but they're sourced through
14 some other company other than BAIC or SoBell or
15 Strategic Marketing Innovators?

16 A. I know of other people that know about it and
17 have done it.

18 Q. Who are those people?

19 A. Nobody that I know specifically, but I just
20 know, you know, a guy named Tom. That's all I got.

21 Q. Okay. How do you know that?

22 A. He said he did, he did a deal, so...

23 Q. Is Tom in Tucson?

24 A. Tom is in Tucson.

25 Q. How did you come to talk to Tom about --

1 A. Through another friend of mine.

2 Q. Do you know Tom's last name?

3 A. I do not.

4 Q. Other than Tom, you don't know anybody else
5 in the state who has sold one of these pension stream
6 products?

7 A. No.

8 Q. That's your testimony?

9 A. That's my testimony, yeah. I don't believe
10 so.

11 Q. We're going to talk about some of the
12 documents in just a little while, the documents that
13 are part of this investment. But, generally speaking,
14 like where did these contracts and documents come from,
15 to your knowledge? Who did -- I take it you didn't
16 prepare them; you didn't draft the sales assistance
17 agreement or the purchase assistance agreement?

18 A. That's correct.

19 Q. These were forms, correct?

20 A. I got these from SMI.

21 Q. Who is Mark Corbett?

22 A. I have -- I don't know.

23 Q. What due diligence did you do before
24 beginning to offer these pension product investments?

25 A. Well, I had many calls with Elliott, their

1 counsel, the company, which I'll refer to as SMI.

2 Q. When you say their counsel, you're talking
3 about SMI, SMI's counsel, Upstate Law Group?

4 A. The counsel I would assume is. I don't know
5 if that's SMI's counsel, but --

6 Q. Okay. But --

7 A. Upstate Law Group.

8 Q. -- Upstate Law Group?

9 A. Yeah.

10 And many conference calls, I would think, and
11 many conversations in regards to the processes and the
12 understanding of the dynamics of the asset in general.

13 (EUO Exhibit 5 was marked for
14 identification.)

15 THE WITNESS: My water is starting to go
16 through me.

17 MR. BURGESS: If you want to take a
18 break, we can take a break.

19 MR. CHESTER: That's fine. And if you
20 want to go off?

21 MR. BURGESS: Yeah, we can go off the
22 record.

23 (A recess was taken from 11:51 a.m. to
24 11:56 a.m.)

25 MR. BURGESS: We can go back on the

1 record.

2 BY MR. BURGESS:

3 Q. Mr. Smith, right before our break you were
4 handed what's been marked as Exhibit No. 5. Do you
5 recognize this document?

6 A. I do.

7 Q. What is it?

8 A. Well, it's marked "Due Diligence for the
9 Structured Income Asset."

10 Q. Did you prepare this document?

11 A. I did.

12 Q. And did you produce it to the Division in
13 response to the Division's October 3rd, 2016 letter,
14 Exhibit No. 2?

15 A. Yes.

16 Q. And this just generally describes, at least
17 in part, the due diligence that you and your firm did
18 before selling these pension products, correct?

19 A. There's some before and after.

20 Q. Okay. In the first paragraph you wrote that,
21 quote, we passed on the initial data to our compliance
22 contact for further review.

23 Is the compliance contact referenced in that
24 sentence Elliott Smith?

25 A. That is correct.

1 Q. And what initial data did you pass on to
2 Mr. Smith?

3 A. From what I remember, the marketing
4 materials, contact information for SMI and Upstate Law
5 Group, initially.

6 Q. Do you have Elliott Smith's contact
7 information?

8 A. I do.

9 Q. Can you provide it to us?

10 A. Right now?

11 Q. Yeah.

12 A. Yeah. I don't know if I have it on my phone
13 or not, so...

14 I do not have it.

15 Q. Okay. When you return to your office, will
16 you provide it to Mr. Chester so that he can provide it
17 to us?

18 A. Okay.

19 Q. Yes?

20 A. Yes.

21 Q. Thank you.

22 The last sentence of that first paragraph
23 says, quote, Several questions arose which prompted a
24 back and forth between SMI, and its principals Upstate
25 Law Group, as well as our compliance person.

1 What questions arose?

2 A. Well, there was a security question, which
3 was the primary one. And I'm not sure I remember any
4 other questions per se. Maybe the processes,
5 et cetera.

6 Q. Is the back and forth you described, was that
7 verbally or via e-mail or correspondence?

8 A. It was verbally, and as we discussed prior,
9 conference calls. When questions might come up, we
10 would do a call again.

11 Q. Are there any e-mails or correspondence
12 related to evaluating this product or getting any
13 answers, any questions answered regarding these
14 products?

15 MR. CHESTER: Do you have a time frame
16 on that; like before sales, after sales?

17 BY MR. BURGESS:

18 Q. Anytime between 2013 and 2015.

19 A. Ask the question again, please.

20 Q. Sure. Do you have any -- well, let me ask it
21 first this way: Were there any e-mails or
22 correspondence in the 2013 to 2015 time frame regarding
23 whether these products were securities?

24 A. I don't recall. I don't -- no.

25 Q. No, you don't recall whether there was

1 correspondence or, no, there was no such
2 correspondence?

3 A. I don't recall.

4 Q. In this paragraph you write that Darren --
5 and I assume that's Darren Bodenhamer, and I'm
6 referring to, looks like, the second sentence when I
7 use Darren. He was the contact for SMI, the
8 distribution company.

9 Did you understand that Mr. Bodenhamer had a
10 financial interest in promoting the sale of these types
11 of investments?

12 A. I assumed he did.

13 Q. Did you know whether Upstate Law Group had
14 any financial incentive in promoting the sale of these
15 investment products?

16 A. I don't know if they -- promoting the sales?

17 Q. Well, they were on this conference call about
18 whether the -- well, they were on these conference
19 calls where questions were being raised as part of the
20 due diligence into this product before it was sold,
21 right?

22 A. Yes.

23 Q. Do you know whether they had a financial
24 incentive as to whether these products -- as to whether
25 you or your firm desired to start selling these

1 products?

2 A. The question is, do I think that they had a
3 financial interest, did they make money on the
4 transaction; and yes, I'm sure they did.

5 Q. Did you understand that they -- before you
6 started selling these products, that Upstate Law Group
7 would make money on the sale of these products?

8 A. I assumed they did, yes.

9 Q. Did that factor into your evaluation of
10 the -- their discussion of these products as part of
11 the due diligence that you were doing?

12 A. I would say, yes, it did, partially.

13 Q. Did you discount anything that either SMI or
14 Upstate Law Group was saying based on your knowledge
15 that they would make money if you decided to start
16 selling these products?

17 A. I relied on their information and, mostly, on
18 my compliance guy's opinion.

19 Q. In the next paragraph you describe traveling
20 to Dallas and personally meeting with the principals of
21 Upstate Law Group, along with the SMI group.

22 Who on behalf of Upstate Law Group was
23 present in Dallas?

24 A. Candy Fuller and Howard or Trey Sutter.

25 Q. And you write that SMI included Brad

1 Churaroska and Katherine Snyder, along with Michael
2 Churaroska, whose job was the vetting of the sellers.

3 Other than Ms. Fuller, Mr. Sutter, Brad
4 Churaroska, Katherine Snyder and Michael Churaroska, do
5 you recall other individuals being at any meetings in
6 Dallas over whether to sell these products?

7 A. I believe Mr. Engolio was there as well.

8 Q. Do you know whether Mr. Engolio was already
9 in the -- had already begun selling these types of
10 products, or was he evaluating, like you were, whether
11 to begin selling these?

12 A. I want to be clear that this wasn't prior to
13 me offering this. This was afterwards.

14 Q. Oh, okay. And I should have asked you that.

15 A. Yeah.

16 Q. When did the meeting, approximately, occur?

17 A. My best guess would be sometime in 2015.

18 Q. What prompted the meeting?

19 A. I was a little frustrated with some of the
20 processes and wanted to have a face-to-face meeting. I
21 think we had a couple of variances or defaults that I
22 wanted to discuss with the law firm and SMI in
23 particular.

24 Q. How long did the meeting in Dallas last; an
25 hour, a day, two days?

1 A. It was, probably total, between five hours
2 one day and an hour or two the next.

3 Q. And what topics do you recall discussing with
4 these individuals?

5 A. Mostly processes and current variances.

6 Q. What process -- what about the processes were
7 you concerned with?

8 A. Communication from Upstate Law Group to
9 myself wasn't as good as I would have liked on problem
10 cases or situations.

11 Q. The variances or defaults?

12 A. Yeah.

13 Q. Anything else about the process?

14 A. There was, and I'm not sure I could be
15 specific to what that was, other than Ms. Fuller
16 wasn't -- her husband handled some of the software
17 stuff, apparently, and I questioned that a little bit.
18 That was met with a little bit of resistance or
19 pushback, I guess. So I voiced my opinion on a couple
20 things.

21 Q. Okay. At the meeting in Dallas, did you
22 discuss whether or not this was -- these products were
23 securities?

24 A. We did not.

25 Q. Okay. I'm a little bit confused by your

1 answer, because the last couple of sentences in the
2 second paragraph on Exhibit No. 5, well, the last two
3 sentences read, quote, A discussion as the regulation
4 in regards to the security aspect was discussed as
5 well. They all agreed this did not pass the, quote,
6 Howie, closed quote, test in regards to the security
7 status.

8 (An off-the-record discussion ensued.)

9 MR. BURGESS: Let the record reflect
10 that Mr. Chester was just consulting with Mr. Smith as
11 I was asking that question.

12 BY MR. BURGESS:

13 Q. So I just read the last two sentences of that
14 second paragraph on Exhibit 5, which indicate that
15 there was some discussion in Dallas about whether these
16 were securities or not; am I --

17 A. No, that's not accurate, and my timelines
18 were not accurate in that particular paragraph.

19 Q. Okay.

20 A. This was discussions we had prior to sales,
21 not at the meeting in Dallas.

22 Q. Okay.

23 A. I just want to be clear.

24 Q. I understand.

25 A. Okay.

1 Q. Did Ms. Kern-Fuller or anybody else from
2 Upstate Law Group represent that these products, these
3 investment products, were not securities?

4 A. That is my understanding from what I remember
5 on conference calls prior to engaging in any sales.

6 Q. Do you have a recollection that
7 Ms. Kern-Fuller said these are not securities?

8 A. I do. And, in fact, she referenced another
9 securities firm out of Philadelphia that was based on
10 where she got her information as well.

11 Q. I was just going to ask you. What is your
12 understanding of Ms. Kern-Fuller's background in
13 securities law?

14 A. I don't have an understanding.

15 Q. You don't know whether she has experience in
16 securities law or not?

17 A. I do not, no.

18 Q. But you recall her saying that a law firm in
19 Philadelphia told her these were not securities?

20 A. Might have been somebody in Pennsylvania, but
21 they had a securities attorney that they worked with in
22 regards to this.

23 Q. Did you or Smith & Cox, LLC ever engage
24 counsel to get advice as to whether these investment
25 products were securities or not?

1 A. What's your definition of counsel?

2 Q. Lawyer.

3 A. No.

4 Q. Other than Elliott Smith, did you or Smith &
5 Cox, LLC ever engage anyone to advise as to whether
6 these investment products were securities or not?

7 A. Would you repeat the question, please?

8 MR. BURGESS: Can you go ahead and read
9 it back.

10 (The record was read by the court
11 reporter as follows:

12 QUESTION: Other than Elliott Smith, did
13 you or Smith & Cox, LLC ever engage anyone to
14 advise as to whether these investment
15 products were securities or not?)

16 THE WITNESS: Not that I can remember.

17 BY MR. BURGESS:

18 Q. So Elliott Smith is the only person that you
19 or your firm engaged to advise on the issue of whether
20 these investment products were securities, correct?

21 A. That could be correct, yes.

22 Q. In the third paragraph you describe having
23 researched other companies that provide a similar
24 service or product, and you understood that some of the
25 other companies out there offering these products

1 provide less than satisfactory service, mainly to the
2 sellers, right?

3 A. That's correct.

4 Q. And then you go on in the last sentence to
5 state, quote, The fact that the vetting and SMI's clear
6 understanding that the seller must be in a better
7 position by doing this than if they didn't gave some
8 clarity as to the overall value of the asset, closed
9 quote.

10 First of all, did I read that correctly?

11 A. You did.

12 Q. Can you explain what you mean by that?

13 A. Vetting is an interview process with the
14 seller to understand their personal financial situation
15 and if this particular asset makes sense for them from
16 a value added position.

17 They also offer credit counseling service,
18 credit elimination or debt elimination or deals to --
19 and the whole idea behind what they do is, the seller,
20 even after discounting some of the income, is going to
21 be in a better position than if they didn't do it in a
22 very short amount of time.

23 Q. Okay. How did that play into your decision
24 to begin offering these types of products?

25 A. That was important; that it wasn't just a

1 really bad deal for the sellers, like some of the other
2 deals I had seen and heard about.

3 Q. Okay. In the fourth paragraph of Exhibit
4 No. 5, in the second sentence you write that in
5 December of 2015, quote, we learned there was an issue
6 with the Texas Department of Securities in regard to
7 PAC and SMI, closed quote.

8 Is PAC Pacific Arbitrage Company?

9 A. No, it's not.

10 Q. What is PAC?

11 A. Performance --

12 Q. Performance Arbitrage Company.

13 A. -- Arbitrage Company.

14 Q. Excuse me.

15 You continue, quote, We decided to stop
16 offering this and then removed this from our ADV.

17 What about the Texas -- I assume this is the
18 Texas order that you referred to earlier --

19 A. Yes.

20 Q. -- today?

21 What about the Texas order concerned you?

22 A. Well, a cease and desist is, in my eyes,
23 probably never a good thing. And that was basically
24 enough for me.

25 Q. Okay. What about the fact that it was coming

1 from the Texas Department of Securities?

2 A. I don't put a lot of credence in what Texas
3 does or what -- I just -- it didn't have a huge meaning
4 to me.

5 Q. Did you read the order?

6 A. I did.

7 Q. And you know it was from the Texas securities
8 regulator, right?

9 A. Yes.

10 Q. And do you recall reading that the order
11 found that these types of products were securities
12 under Texas law?

13 A. I don't remember reading that.

14 Q. Okay. Continuing on paragraph four on
15 Exhibit No. 5, you wrote, quote, After additional
16 research, we understood there was another player
17 involved named Andrew Gamber, who was associated with
18 the SMI group and PAC as well. We learned he had a not
19 so good record in various states with a similar
20 business, closed quote.

21 What's your understanding of how Mr. Gamber
22 was associated with SMI?

23 A. Looking back right now, I'm not sure he ever
24 was involved with them. It might have been a mistake
25 on my part. So my understanding is, I don't know if he

1 was involved with SMI.

2 Q. Okay. But at the time you wrote this Exhibit
3 No. 5, you thought he was?

4 A. Yeah.

5 Q. What is or was your understanding that
6 Mr. Gamber was associated with Performance Arbitrage
7 Company?

8 A. I knew nothing of it until after December of
9 2015, and as I stated, I contacted SMI and asked them
10 about it. And they said they weren't involved, had not
11 been involved with him for quite some time.

12 Q. You said that SMI said that Mr. Gamber hadn't
13 been involved with SMI?

14 A. SMI and PAC were kind of closely knitted.

15 Q. How so?

16 A. I think some of the same principals,
17 Katherine Snyder and Brad --

18 Q. Churaroska?

19 A. -- had involvement with both groups.

20 Q. Okay. Did you learn about Mr. Gamber's
21 business record in other states?

22 A. A Google search revealed he had issues in, to
23 my best recollection, Arkansas under another name,
24 business name, rather than SMI or PAC. So I do know
25 that.

1 Q. VFG, does that sound familiar?

2 A. Sounds very familiar.

3 Q. Voyager Financial Group?

4 A. Yeah.

5 Q. Who did you -- in the last sentence you
6 wrote, quote, I contacted SMI and PAC as to this
7 relationship and they let me know the relationship was
8 terminated and they were no longer involved with him in
9 any way.

10 That sentence refers to Mr. Gamber, correct?

11 A. That's correct.

12 Q. When you contacted SMI and PAC, did they --
13 in order for them to say he was -- the relationship was
14 terminated, that has to have meant that there was a
15 relationship prior to the termination between Gamber
16 and SMI and PAC, right?

17 A. To what extent, yes, but I don't know.

18 Q. You agree that there must have been a
19 relationship, but you don't know the extent of the
20 relationship between Gamber and SMI and PAC?

21 A. That's correct.

22 Q. In the last paragraph in Exhibit 5 you write,
23 quote, Our clients are receiving their payments monthly
24 and understand that SMI and PAC are strong and able to
25 continue this for the foreseeable future, closed quote.

1 Is it still a true statement that your
2 clients are receiving their payments monthly?

3 A. Not all of them. That's correct.

4 Q. Approximately what percentage of your
5 clients are no longer receiving their monthly
6 payments?

7 You can either give a percentage or, you
8 know, ten clients or four clients, whatever the number,
9 whatever is the best way for you to answer that.

10 MR. CHESTER: Yeah, you may want to do
11 it by contracts, because you have to think of clients
12 and contracts, two different numbers.

13 THE WITNESS: Yeah.

14 5 percent.

15 MR. CHESTER: Of?

16 THE WITNESS: The total, 21 people.

17 BY MR. BURGESS:

18 Q. 5 percent of 21 people?

19 A. Yeah.

20 Q. Okay. So that's --

21 A. One or two.

22 Q. My math is not the best. So what is that,
23 like three or four people?

24 A. Shannon?

25 MS. NELSON: I --

1 BY MR. BURGESS:

2 Q. Sorry, we have to ask the questions; not the
3 other way around.

4 A. So 10 percent is two. So if 5 percent is one
5 or two, I would say 10 percent, 10 percent of the
6 people.

7 Q. Okay. My understanding was PAC was supposed
8 to guarantee payment in the event of a default; is that
9 right?

10 A. That's correct.

11 Q. Is PAC not paying on its guarantee?

12 A. PAC has been -- gone. LFO has assumed PAC's
13 liabilities.

14 Q. That's Life Funding Options?

15 A. Correct.

16 Q. Who are the principals of Life Funding
17 Options?

18 A. I believe Katherine Snyder is the principal.
19 I don't think Brad has any ownership.

20 Q. Is Ms. Kern-Fuller a principal of Life
21 Funding; do you know?

22 A. I don't know.

23 Q. Do you know why Life Funding Options has
24 taken over from PAC?

25 A. My understanding is to have a clear

1 separation from Gamber in a more legal sense, is my
2 understanding.

3 MR. BURGESS: Do you have anything
4 before I move on?

5 MS. NELSON: Huh-uh.

6 MR. CHESTER: How you doing? Good?

7 THE WITNESS: Uh-huh.

8 BY MR. BURGESS:

9 Q. What other due diligence, other than what
10 we've just gone over in Exhibit 5, did you or your firm
11 do prior to beginning to sell these investment
12 products?

13 A. I don't know of any other.

14 Q. Okay.

15 MR. BURGESS: Let's mark this as Exhibit
16 No. 6.

17 (EUO Exhibit 6 was marked for
18 identification.)

19 MR. BURGESS: And 7.

20 (EUO Exhibit 7 was marked for
21 identification.)

22 BY MR. BURGESS:

23 Q. Mr. Smith, you've just been handed Exhibits 6
24 and 7 to your examination under oath. Do you recognize
25 Exhibit No. 6?

1 A. I believe I provided this to the -- you.

2 Q. To the Division?

3 A. Correct.

4 Q. With your production in October of --

5 A. Right.

6 Q. -- 2016?

7 And the same question with respect to Exhibit
8 No. 7; do you recognize this document?

9 A. I do not.

10 Maybe I do.

11 Q. Take your time. I mean take a minute and
12 look at it.

13 A. I think this was part of the package that I
14 provided to the Division, if I'm not mistaken.

15 Q. And that's exactly as I understand it as
16 well.

17 A. Okay.

18 MR. CHESTER: Just wait for a question.

19 THE WITNESS: Sorry.

20 MR. CHESTER: Take your time.

21 BY MR. BURGESS:

22 Q. So Exhibit No. 6 is correspondence on U.S.
23 Department of Labor letterhead, correct?

24 A. Yes.

25 Q. And it's got a stamp that provides the date

1 October 3rd, 2014, correct?

2 A. Yes.

3 Q. And it's a letter addressed to Scott Kohn,
4 with a K, care of James Maxson at Morris, Manning &
5 Martin, in Atlanta, Georgia, correct?

6 A. Yes.

7 Q. And the subject line says, "Re: Pensions,
8 Annuities and Settlements, LLC," right?

9 A. Yes.

10 Q. Do you know who Scott Kohn, James Maxson or
11 Morris, Manning & Martin are?

12 A. No, I do not.

13 Q. Do you know of an entity named Pensions,
14 Annuities and Settlements, LLC?

15 A. I've heard of them.

16 Q. Where; how?

17 A. I don't recall.

18 Q. Do you know what the business is of this
19 limited liability company?

20 A. I don't, specifically.

21 Q. What about generally?

22 A. An assumption would tell me what it might be.

23 Q. Based on its name?

24 A. Based on its name.

25 Q. Do you recall how you came to be in

1 possession of this letter?

2 A. I don't recall.

3 Q. Was receiving or reviewing this letter part
4 of Smith & Cox, LLC's due diligence regarding its
5 decision to sell these pension product investments?

6 A. No, it was not.

7 Q. It was not.

8 Why did you provide this letter to us?

9 A. Just some data that I had received that I
10 felt might be pertinent.

11 Q. How did you feel it might be pertinent?

12 A. Just to the legality of the asset in general,
13 I suppose.

14 Q. What about this letter informs you about the
15 legality of the asset? And by asset, you mean the
16 pension product investments --

17 A. I understand.

18 Q. -- that we've been talking about, right?

19 What about this letter informed you as to the
20 legality of pension product investments?

21 A. Maybe a loose interpretation that this isn't
22 illegal.

23 Q. So the letter appears to be from a woman in
24 the Philadelphia Regional Office of the Department of
25 Labor, whose title is supervisory investigator,

1 correct?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes. Sorry.

5 Q. And it's addressed to people that you don't
6 know?

7 A. That's correct.

8 Q. And it's regarding an LLC that you don't know
9 what business it does, right?

10 A. That's correct.

11 Q. And this supervisory investigator authoring
12 this letter says she is writing to Mr. Kohn and
13 Mr. Maxson and the Morris, Manning, Martin firm to
14 inform them that, quote, the Department has now
15 concluded its investigation. No further action is
16 contemplated at this time, closed quote.

17 Do you know what, if anything -- do you know
18 what the Department of Labor was investigating?

19 A. I do not know specifics.

20 Q. Well, do you know generally what the
21 Department of Labor was investigating?

22 A. Again, I was told this was in reference to a
23 structured income payment scenario, much like this that
24 we're talking about today.

25 Q. Who told you that?

1 A. Again, I'm not sure who it was specifically.

2 Q. Okay. This letter doesn't address the
3 products being sold by BAIC or SMI, correct?

4 A. It doesn't say their name anywhere, that's
5 correct.

6 Q. And the same question with respect to SoBell;
7 this letter doesn't address any investments that SoBell
8 was selling, correct?

9 A. SoBell didn't sell investments.

10 Q. This letter doesn't address any activity or
11 proposed activity by SoBell, correct?

12 A. That's correct.

13 Q. The letter references the Employee Retirement
14 Income and Securities Act of 1974, also known as ERISA,
15 right?

16 A. Yes.

17 Q. Does this letter reference military pensions?

18 A. It does not.

19 Q. Does this letter reference military
20 disability benefits?

21 A. No.

22 Q. Does this letter reference any statutes that
23 concern military pensions or disability benefits?

24 A. No.

25 Q. Exhibit No. 7, turning to Exhibit No. 7, this

1 is a memorandum dated May 12, 2015 on the first page,
2 correct?

3 A. Yes.

4 Q. And it's addressed to, quote, Future Income
5 Payments, LLC (FIP), correct?

6 A. Yes.

7 Q. Do you know who or what -- well, let me start
8 that over.

9 Do you know of an LLC known as Future Income
10 Payments, LLC or FIP?

11 A. I have heard of them.

12 Q. How; where?

13 A. I don't know.

14 Q. Do you know what the business of Future
15 Income Payments, LLC is?

16 A. My understanding is, similar in respect to
17 SMI and what they do.

18 Q. Have you ever seen any investments that were
19 sold by Future Income Payments, LLC?

20 A. I have not.

21 Q. So you don't know the structure of those, do
22 you?

23 A. No, other than what I've read at this point
24 and I've been on their website. So it seemed to line
25 up very closely with SMI.

1 Q. Okay. The subject line on this memorandum
2 says, "Re: Characterization of FIP's Purchase of
3 Income Streams Generated By Pensions; Application of
4 Federal Anti-Alienation Provisions," correct?

5 A. Yes.

6 Q. Do you know who authored this memorandum?

7 A. I don't know.

8 Q. There's no indication on this document who
9 authored this, correct?

10 A. It doesn't appear so.

11 Q. And this memorandum is not a legal opinion
12 regarding any products with which BAIC, SoBell or SMI
13 were involved, correct?

14 THE WITNESS: Could you read me the
15 question again, please?

16 (The record was read by the court
17 reporter as follows:

18 QUESTION: And this memorandum is not a
19 legal opinion regarding any products with
20 which BAIC, SoBell or SMI were involved,
21 correct?)

22 THE WITNESS: I'm not an attorney, so I
23 don't know I can qualify it.

24 BY MR. BURGESS:

25 Q. Well, is BAIC or SoBell or SMI referenced

COASH & COASH, INC.
www.coashandcoash.com

602-258-1440
Phoenix, AZ

1 anywhere in this memorandum?

2 A. No, they are not, to my best knowledge.

3 Q. Do you know where you received this document
4 from?

5 A. I do not recall.

6 Q. Now, this document is dated May 12th, 2015.
7 That's well into the period when Smith & Cox was
8 already selling these pension product investments,
9 correct?

10 A. That's correct.

11 Q. Did this document inform your firm's due
12 diligence as to whether to sell these investments?

13 A. We had already been offering it, those
14 investments, so it was just, in my eyes, data to
15 validate its purpose, et cetera, and analysis.

16 Q. Did receiving this document -- when you
17 received this document, did you review it?

18 A. I looked at it, yes.

19 Q. Do you believe you received it soon after it
20 was written in May 2015?

21 A. I don't recall.

22 Q. Do you know whether you received this
23 document before you stopped selling the pension product
24 investments?

25 A. Again, I don't -- I don't know. I don't

1 recall.

2 Q. On the fourth page of Exhibit No. 7, in the
3 upper right-hand corner it says Page 4 of 6, and
4 there's also what we call a Bates stamp number in the
5 lower right-hand corner, the letters ACC followed by
6 the number 000314. That's the page I'm on.

7 Towards the bottom of the page, under the
8 heading Application of 38 U.S.C. Section 5301(a) and
9 37 U.S.C. Section 701(c) to FIP's Purchase
10 Transactions, that paragraph. The first paragraph
11 under that heading states, in part, "There is currently
12 less precedent and, thus, less certainty, as to the
13 outcome of the application of 38 U.S.C. Section 5301(a)
14 (prohibition on assignment of veteran's disability
15 benefits) and 37 U.S.C. 701(c) (prohibition on
16 assignment of earnings by members of the Armed Forces)
17 to FIP's purchase agreements, and, what precedent there
18 is cuts both ways."

19 Did I read that correctly?

20 A. You did.

21 Q. Do you recall reading that information when
22 you received this document?

23 A. I do not.

24 Q. You don't recall reading that there was less
25 certainty as to the outcome of how the two federal

1 statutes described would impact these types of
2 investments?

3 A. I do not recall.

4 Q. On Page 6 of 6, also Bates-stamped page
5 ending in 316, the first two paragraphs on that page
6 discuss a case, Henry versus Structured Investments
7 Company out of the California Superior Court, and two
8 federal cases from Bankruptcy Courts, in re Dunlap and
9 in re Moorhous. And the courts in each of those three
10 cases, the California State Court case and the two
11 Bankruptcy Court cases, held that the assignment or
12 sale of the payments was invalid, right?

13 A. Invalid or prohibited? Where are you seeing
14 the invalid?

15 Q. Prohibited.

16 A. Okay.

17 Q. Prohibited works for me.

18 For instance, the first paragraph on Page 6,
19 in discussing the Henry case, says in the last
20 sentence, quote, the transaction was a prohibited
21 assignment of military veterans' disability pay and
22 violated federal law, closed quote.

23 And then in the next paragraph, in re Dunlap,
24 the author of this memo relates that the purchase
25 agreement whereby rights to those payments were

1 assigned to the purchasing company were prohibited by
2 the statute governing military members' retirement pay.

3 And then in discussing the Moorhous case
4 later in that paragraph, the memorandum states, "As a
5 result, the instant Agreement's attempt to transfer
6 rights in Mr. Dunlap's Pension Payments when those
7 payments were not yet due and payable was in
8 contravention of 37 U.S.C. Section 701(a) because, at
9 the time the Agreement was entered into, Mr. Dunlap had
10 no rights in his future Pension Payments to convey to
11 the purchasing company."

12 And that's actually a quote from the Court,
13 correct?

14 A. It appears so, yes.

15 Q. Yeah. Okay.

16 Do you recall reading that information when
17 you received this memorandum?

18 A. I don't recall.

19 Q. Before Smith & Cox -- well, as Smith & Cox --
20 let me start that all over again.

21 Before Smith & Cox began selling these
22 pension product investments in roughly October 2013,
23 did you or your firm do any due diligence to determine
24 if there were any regulatory orders out there
25 concerning these types of investments?

1 A. Again, I leaned on my compliance guy to do
2 some of the research on our behalf.

3 Q. But did you specifically ask him to look into
4 whether there were any state regulatory or federal
5 regulatory orders concerning these types of
6 investments?

7 A. I don't recall if that question was asked
8 specifically.

9 Q. Okay. Okay. So you have no recollection of
10 whether through yourself, your firm or through Elliott
11 Smith, looking to determine whether there were state
12 regulatory orders concerning these types of
13 investments?

14 A. I don't -- I don't recall specifically.

15 Q. Do you recall generally doing that?

16 A. I don't recall generally or specifically.

17 Q. So, again, you have no recollection of doing
18 that, right?

19 A. I don't have a recollection.

20 MR. CHESTER: Do you need a break, or
21 are you okay?

22 THE WITNESS: I'm good.

23 BY MR. BURGESS:

24 Q. And then for the two-year, one-month period
25 when Smith & Cox was selling these investment products,

1 did you do any continuing due diligence into them?

2 And we've talked about the meeting in Dallas.

3 And other than that, which I would -- you can
4 characterize that however you want, but let's put that
5 on the side of the table. Other than that meeting, did
6 you do any continuing due diligence into these
7 products, as to the legality of them, whether they were
8 securities, anything of that nature?

9 A. I don't believe so.

10 Q. Then I take it that either before you started
11 selling these products or during the period of time
12 when your firm was selling these products, you were
13 unaware that on April 22nd, 2013, the Arkansas
14 Securities Commissioner entered a cease and desist
15 order against Mr. Gamber and VFG concerning the
16 unregistered sale of securities involving military
17 retirement pension streams?

18 A. I was not aware of that.

19 Q. And I take it that you were not aware that on
20 September 20th, 2013, the Iowa Insurance Commissioner
21 entered a consent order under which Mr. Gamber and VFG
22 were ordered to cease and desist from violating Iowa's
23 securities laws with respect to the sale of income
24 stream contracts?

25 A. I was not aware of that.

1 Q. And I take it that you were not aware that on
2 December 10th, 2013, the Securities Division of the New
3 Mexico's Regulation and Licensing Department entered a
4 cease and desist order against VFG and found, in part,
5 that VFG and its sales agents had omitted to disclose
6 to investors the material fact that the assignment of
7 these types of income streams is prohibited under two
8 different federal statutes? You weren't aware of that?

9 A. I was not.

10 Q. I take it that you also were not aware that
11 on March 18th, 2014, the Arkansas Securities
12 Commissioner entered a second cease and desist order
13 against VFG, finding that VFG had violated the
14 registration and antifraud provisions of the Arkansas
15 Securities Act with respect to the sale of investments
16 involving military pensions and disability benefits?

17 A. I did not. I was not aware.

18 Q. And I take it that you were not aware that on
19 May 12th, 2014, Pennsylvania's Department of Banking
20 and Securities entered a consent order against VFG,
21 which Andrew Gamber signed on VFG's behalf, and that
22 the consent order found that, in part, that one of its
23 findings was that the assignment of military pensions
24 is prohibited by federal law?

25 A. I wasn't aware of that.

1 Q. I take it that you were also not aware that
2 on June 23rd, 2014, the Arkansas Securities
3 Commissioner entered another consent order against VFG
4 and Gamber, which found that Gamber had violated the
5 registration provisions of the Arkansas Securities Act
6 and that the products at issue involved income stream
7 investments?

8 A. I wasn't aware.

9 Q. I take it you were not aware that in August,
10 on August 26, 2014, Florida's Office of Financial
11 Regulation entered a final order against VFG for
12 selling military retirement income streams as
13 unregistered securities?

14 A. I was not aware.

15 Q. And then I assume that you were also not
16 aware that on November 7th, 2014, California's
17 Department of Business Oversight entered a desist and
18 refrain order against VFG for selling military
19 retirement income streams as unregistered securities?

20 A. I was not aware.

21 Q. If you had been aware of any of those several
22 orders we've just discussed, would you have sold or
23 continued selling the pension product investments?

24 A. I'll tell you it would have raised a flag for
25 me to dig a little deeper.

1 MR. BURGESS: This is No. 8.

2 (An off-the-record discussion ensued.)

3 (EUO Exhibit 8 was marked for
4 identification.)

5 BY MR. BURGESS:

6 Q. Mr. Smith, we've just handed you what's been
7 marked as Exhibit No. 8. Do you recognize this
8 document?

9 A. I do.

10 Q. What is it?

11 A. An agent agreement.

12 Q. Between whom?

13 A. SMI and myself.

14 MR. CHESTER: No.

15 THE WITNESS: Smith & Cox. Excuse me.

16 BY MR. BURGESS:

17 Q. And pursuant to this agreement, did Smith &
18 Cox, LLC become the agent for SMI?

19 A. I'm not really sure, because I signed it. So
20 not being a legal mind here, I don't know.

21 Q. Fair enough.

22 Just direct your attention to the first few
23 lines on the first page under the header Agent
24 Agreement. It says, quote, The Agent Agreement is made
25 this 10th day of February, 2014 by and between

1 Strategic Marketing Innovators, LLC (the Company) and
2 Smith & Cox, LLC (the Agent).

3 That was kind of the source of my question.
4 Is it your understanding that your firm became SMI's
5 agent pursuant to this agreement?

6 A. Yes.

7 Q. The next paragraph references -- well, let me
8 just read it for clarity.

9 It says, quote, Whereas, the Company is a
10 Marketing company specializing in the promotion of
11 different products and services which desires to
12 commission the Agent to promote such products and
13 services or to recruit professional and properly
14 licensed individuals to promote such products and
15 services as a selected agent of the Engolio Financial
16 Group, LLC professional network.

17 I'm trying to understand. Can you enlighten
18 me or explain what Engolio Financial Group's role was
19 in this agreement?

20 A. I can only assume that it was an up-line
21 arrangement.

22 Q. What does that mean?

23 A. It means he would get an override on my
24 business, as well as what I'm -- what I gather from
25 this.

1 Q. So if you -- so let's break this down.

2 If Smith & Cox sold a pension product
3 investment, Smith & Cox received some commission for
4 that sale, right?

5 A. Correct.

6 Q. And then when you say there was an up-line
7 arrangement with Engolio Financial Group and Engolio
8 would get an override, would that mean that on top of
9 your commission, Engolio would receive a commission as
10 well?

11 A. As I said, I assume there is an up-line
12 arrangement. I do not know any specifics there, so I
13 can't say yes or no.

14 Q. Did Smith & Cox share its commission with
15 Engolio?

16 A. No.

17 Q. So the commission Smith & Cox got was just
18 for Smith & Cox?

19 A. Correct.

20 Q. If Engolio Financial Group got monies from
21 the sale of an investment that your firm sold, sobeit;
22 but you didn't -- it didn't come out of your
23 commission?

24 A. That's correct.

25 Q. How did the -- as long as we're talking about

1 commissions, and you may know better than I do, how was
2 the commission calculated on the products that your
3 firm sold?

4 A. Based on the amount of money.

5 Q. Based on the purchase price?

6 A. Correct.

7 Q. So it was a percentage of the purchase price?

8 A. Exactly.

9 Q. What was the percentage?

10 A. Generally speaking, 5 or 5 and a
11 half percent.

12 Q. So if an investor purchased for \$100,000 one
13 of these pension product investments, your firm would
14 receive a commission of between 5,000 and \$5,500,
15 correct?

16 A. That sounds accurate.

17 Q. Okay. Do you know, whether precisely or
18 ballpark, how much the total commissions were that your
19 firm received in connection with the sale of these
20 pension product investments?

21 A. I do not have a ballpark. I mean I could do
22 math. \$2 million times 5 percent is 100,000, right?

23 Q. So you think that's maybe a ballpark?

24 A. If my math is accurate, that could be a
25 ballpark.

1 Q. Okay.

2 MR. CHESTER: They are what they are.

3 BY MR. BURGESS:

4 Q. Let's talk a little bit about the structure
5 of these investment products. The documents that you
6 produced to us in what I earlier described as client
7 files -- and you're free -- if you want to
8 recharacterize my use of that term or description of
9 those documents, feel free; but for ease of reference
10 I'm going to call them kind of client files.

11 Each client file consisted of pretty much a
12 closing book; is that accurate?

13 A. Yes.

14 Q. And there were various -- there were a number
15 of documents, 15, 16, 17 documents in each closing
16 book, various types of contracts and other formal
17 documents, right?

18 A. Correct.

19 Q. Were the closing -- and these were form
20 documents, right? I mean each closing book was
21 substantially identical, except for the particulars of
22 the investment; in other words, who the seller was, the
23 amount, the date, who the buyer was, those particulars;
24 but the documents themselves were form documents,
25 correct?

1 A. As far as I could tell, yes.

2 Q. And I believe you said you received -- who
3 did you -- earlier you said you received the documents
4 from SMI, but I want to be as clear as possible. Did
5 the close -- who did you receive the closing books
6 from?

7 A. I think it was SMI.

8 Q. And I believe all the client files that we
9 looked at and the closing books that you produced were
10 either, to use your terminology, sourced by either BAIC
11 or SoBell; is that your recollection?

12 A. That's my recollection.

13 Q. Would you agree that the closing book form
14 documents were substantially identical regardless of
15 whether the sourcer was BAIC or SoBell?

16 A. I would assume that's accurate.

17 MR. BURGESS: This is 9.

18 MR. CHESTER: Counsel, when you're done
19 with this document, quick break?

20 MR. BURGESS: Sure.

21 It's actually going to be two documents,
22 but it will be fast.

23 MR. CHESTER: That's fine.

24 MR. BURGESS: They're, as we say,
25 substantially identical. So this will be 10.

1 (EUO Exhibit 9 and EUO Exhibit 10 were
2 marked for identification.)

3 BY MR. BURGESS:

4 Q. Mr. Smith, we've just handed you Exhibits 9
5 and 10. Is it fair to say Exhibit No. 9 is a sales
6 agreement -- a sales assistance agreement involving a
7 pension sourced by SoBell Corp.?

8 A. I would say that's accurate.

9 Q. Okay. And is it fair to say that Exhibit 10
10 is a sales assistance agreement sourced by BAIC, Inc.?

11 A. That seems accurate as well.

12 MR. BURGESS: Okay, we can take a break.

13 (A recess was taken from 1:01 p.m. to
14 1:09 p.m.)

15 MR. BURGESS: We're on the record now.

16 11.

17 (EUO Exhibit 11 was marked for
18 identification.)

19 MR. BURGESS: 12.

20 (EUO Exhibit 12 was marked for
21 identification.)

22 BY MR. BURGESS:

23 Q. Mr. Smith, you've just been handed
24 Exhibits 11 and 12. Is Exhibit No. 11 a purchase
25 assistance agreement by and between BAIC, Inc. and

1 Smith & Cox, which are defined together and/or
2 individually or in combination as the Transaction
3 Assistance Team?

4 A. Uh-huh.

5 Q. And then this agreement is also between or is
6 also with a buyer, correct? In this case it's the
7 Liberty Trust Company for the benefit of Barbara
8 Busacker?

9 A. Uh-huh.

10 Q. Correct?

11 A. Uh-huh.

12 Q. And these are just samples, and I'll
13 represent that with respect to the prior two exhibits,
14 9 and 10. These are just sample agreements that I just
15 randomly picked from what Smith & Cox produced to us
16 from the client files and the closing books.

17 MS. NELSON: Can you ask him to confirm
18 that verbally?

19 THE COURT REPORTER: He's saying uh-huh.

20 THE WITNESS: Please state your question
21 again.

22 BY MR. BURGESS:

23 Q. Wow.

24 A. You are correct. That's what these are.

25 Q. And one's a purchase agreement involving BAIC

1 and another is involve -- and Exhibit 12 is a purchase
2 assistance agreement involving SoBell Corp., correct?

3 A. That's correct.

4 Q. And these purchase assistance agreements,
5 Exhibits 11 and 12, are they substantially identical to
6 each other except for the names of the parties and the
7 dates?

8 A. It appears so.

9 Q. And each of these purchase assistance
10 agreements define Smith & Cox as part of the -- well,
11 let me strike that.

12 A. Well, they're not completely similar.

13 Q. Fair enough. Go ahead and explain how they
14 differ.

15 A. The basic format of the Page 3, for instance,
16 in the middle of the page we see Liberty Trust Company.
17 In the middle of the page on the other, in No. 12, it
18 says Upstate Law Group. Otherwise, they seem similar.

19 I know why.

20 Q. Why?

21 A. One is an IRA and the other is not.

22 Q. Okay. So with respect to the one that's an
23 IRA, what needed to happen with the funds?

24 A. It goes to a custodian.

25 Q. It couldn't go to Upstate Law Group first?

1 A. I don't know.

2 Q. Both of these purchase assistance agreements
3 call for the purchase price, and I'm on Page 1 of each
4 agreement, the purchase price for this investment to be
5 paid/delivered to the Upstate Law Group, LLC IOLTA
6 Account, correct?

7 A. That's what it says on Page 1, yes.

8 Q. Of both of these agreements, right?

9 A. Yes.

10 These are both IRAs, by the way, so they are
11 different.

12 Q. In looking at Paragraph 3.2 of each
13 agreement, it calls for the payment of commissions. On
14 Exhibit 11, a payment of a commission to the
15 Transaction Assistance Team, correct?

16 A. Yes.

17 Q. And on Exhibit 12, in Paragraph 3.2, the last
18 clause there provides for funds in the amount of the
19 commission, applicable transaction fees and transaction
20 costs are delivered to the escrow agent for appropriate
21 disbursement at the closing of this transaction,
22 correct?

23 A. Yes.

24 Q. And is it your understanding that under this
25 provision Smith & Cox was to receive its commission?

1 A. Yes.

2 Q. Who did Smith & Cox receive the commission
3 payments from? Were they -- did they come from Upstate
4 Law Group?

5 A. That is what I recall. I believe.

6 (EUO Exhibit 13 was marked for
7 identification.)

8 BY MR. BURGESS:

9 Q. Mr. Smith, you have just been handed Exhibit
10 No. 13. This is a contract for sale of payments. It's
11 just a sample document that I -- from the various
12 documents that you and your firm produced, and this one
13 in particular involves a David Green, as the seller,
14 and Provident Trust Financial Group Custodian for the
15 Benefit of Dean Hebb, as the buyer; do you see that?

16 A. Yes.

17 Q. Is it fair to say that each of the pension
18 product investments that you and your firm sold, the
19 buyer and seller executed one of these contract for
20 sale of payments?

21 A. That's -- yes.

22 Q. Is it fair to say that, collectively, the
23 various documents in the closing books collectively
24 represented the investment to be a binding agreement
25 between the seller and the buyer for a legally

1 enforceable contractual obligation for the veteran to
2 pay and the investor to receive future payments from
3 the veteran's pension or disability benefits in
4 exchange for a discounted lump sum?

5 A. I'm not an attorney, so I cannot answer that
6 with any type of authority in my mind.

7 Q. I'm not asking you as an attorney. Did these
8 closing book documents collectively represent an
9 agreement for the veteran to pay his or her future
10 retirement or disability benefits to the buyer, the
11 investor, in exchange for a discounted lump sum?

12 A. I would say that was inaccurate, but --

13 Q. Inaccurate, meaning not accurate?

14 A. What you just said, yes, because I mean if
15 we're going to split hairs, it's the seller agrees to
16 give a portion of its income. You said its income.

17 Q. Okay.

18 A. So that would make it more accurate, to me.

19 Q. Okay. With that correction, is it otherwise
20 accurate?

21 A. It seems like it would be accurate.

22 Q. So binding obligation on the part of the
23 veteran to pay some portion of his or her future
24 benefits to the buyer, correct?

25 A. For me, from a 30,000-foot, nonattorney view,

1 yes, that would be correct.

2 Q. Okay. How did you and your firm market these
3 investments?

4 A. We just do normal marketing events,
5 referrals, things like that. We didn't market this
6 specifically. It was just our services.

7 Q. How do you -- you said normal marketing.
8 What's your normal marketing?

9 A. Our normal marketing is lunch and learn
10 seminars. We work with a law firm that markets too, so
11 we work together sometimes; digital marketing, things
12 like that.

13 Q. Which law firm do you market with?

14 A. Morris Hall.

15 (An off-the-record discussion ensued.)

16 (EUO Exhibit 14 was marked for
17 identification.)

18 BY MR. BURGESS:

19 Q. You've just been handed Exhibit No. 14. Do
20 you recognize this document?

21 A. I do.

22 Q. What is it?

23 A. It's an executive summary document for
24 structured income assets.

25 Q. How did you -- was this one of the marketing

1 materials you provided to clients or potential clients
2 that might want to invest in these products?

3 A. I did.

4 Q. Who would you typically give these to; like
5 anybody who expressed a potential interest in this
6 product or just some of the people?

7 A. Just some of the people.

8 Q. Turning you to the second page of Exhibit 14,
9 there's a paragraph that begins "The Seller's income is
10 life contingent, therefore, in addition to the detailed
11 contractual obligations, the purchase amount is secured
12 by a life insurance policy on the Seller or by PAC
13 Option (see page 3)."

14 Do you see that?

15 A. Yes.

16 Q. Let's go to Page 3, which describes
17 Performance Arbitrage group. In the first paragraph,
18 in the middle of the first paragraph, there's a
19 sentence that reads, quote, This purchase will be in
20 the form of a Corporate Promissory Note that is
21 guaranteed by PAC and paid in equal monthly payments
22 over the remaining term of the capital -- over the
23 remaining term of the original, excuse me, Contract for
24 Sale of Payments agreement, and the sentence continues.

25 So is it your understanding that PAC was

1 guaranteeing the payments under this option?

2 A. That was my understanding.

3 Q. What was your understanding of PAC's assets
4 and liabilities?

5 A. My understanding was that they created
6 reserves from selling that as part of the process that
7 they were involved with in each deal.

8 Q. Do you know what the amount of the reserve
9 was in each deal?

10 A. I don't know.

11 Q. Do you know if it was a percentage?

12 A. I don't know.

13 Q. Do you know whether they actually created
14 such a reserve?

15 A. Do I know if they did?

16 Q. Yeah.

17 A. I assume they did.

18 Q. But you don't know?

19 A. I don't know.

20 Q. Other than the reserves that you assume PAC
21 created for each transaction, do you know whether it
22 had any other assets?

23 A. I do not know.

24 Q. Do you know the business history of PAC?

25 A. I don't.

1 Q. Do you know the business history of PAC's
2 principals?

3 A. No, I don't.

4 Q. Did you do any due diligence to determine
5 that PAC actually had an ability to pay on its
6 guarantee?

7 A. PAC came on right after we started. So I
8 assume, from a natural assumption, that their reserves
9 were limited to business that was taking place at that
10 particular time. So it was relatively new when I came
11 on board, so...

12 Q. How did the reserve work; do you know?

13 A. Technically, no, I do not know.

14 Q. For instance, do you know whether if a -- say
15 there was a \$100,000 investment. What would the -- do
16 you know what the reserve percentage would be?

17 A. I do not know.

18 Q. Let's assume it was 3 percent. Does that
19 sound reasonable or -- we can make it any percentage
20 you want.

21 A. I don't know what reasonable -- how that
22 might be defined.

23 Q. Well, let's say 10 percent.

24 A. Okay.

25 Q. So let's say there's a \$100,000 investment,

1 and then PAC is going to, from that \$100,000, take
2 \$10,000 and put it in a reserve.

3 A. Okay.

4 Q. The payments under that investment are
5 supposed to total something more than \$100,000 over the
6 course of the contract, right?

7 A. Yes.

8 Q. If the seller breaches, seller only pays
9 \$25,000, do you know whether PAC would pay the
10 remaining \$75,000-plus from its reserve on that
11 transaction or from its overall reserves?

12 A. I don't know.

13 Q. So you don't know whether it's possible
14 whether it was PAC's plan to pay based solely on the
15 \$10,000 that it reserved on that particular
16 transaction?

17 A. I don't know.

18 Q. If you turn to the next page of Exhibit 14,
19 Attachment 1, there's a header that says, "UCC-1
20 Financing Statement," and then it says "Definition,"
21 and it's quoting now. Quote, Definition: Under the
22 provisions of state Universal Commercial Code statutes,
23 when personal property, and the sentence continues.

24 Do you know what the Universal Commercial
25 Code is?

1 A. No, but I did remember researching that prior
2 to doing business with them.

3 Q. And what did you find?

4 A. Something similar to this. In fact, I might
5 have hit this link. I don't know. I remembered some
6 law, some law cite that I saw the definition of it.

7 Q. Did you share this -- did you receive this
8 executive summary from SMI before you started selling
9 the products; do you recall?

10 A. I believe I did, yes.

11 Q. Is this one of the documents you believe you
12 shared with Elliott Smith?

13 A. I do. I think so. I'm sure I did.

14 Q. And you would have expected that he would
15 have reviewed this document as part of his due
16 diligence on your behalf, right?

17 A. I would think so.

18 Q. Going to Page 2 of Exhibit No. 14, there's a
19 table that has across the top categories for Risk
20 Factor, Mitigation Step, and then Comments. And a risk
21 factor at the bottom of the page is identified as the
22 closing risk, and the mitigation step is described, in
23 part, as SMI engaging Upstate Law Group; do you see
24 that?

25 A. I do.

1 Q. And then the comment says, "Formal legal
2 agreements and filings create the Buyer's entitlement
3 to the purchased Structured Income Asset and the
4 Seller's formal obligations to pay."

5 My question is, who did ULG, Upstate Law
6 Group, represent in such transactions?

7 A. My understanding is they represented the
8 buyer and the seller.

9 Q. The buyer meaning the investor and the seller
10 meaning the veteran?

11 A. On a transactional basis. I --

12 Q. Okay. Are you --

13 A. Go ahead.

14 Q. Do you know where that's stated anywhere in
15 writing in any of these closing book documents?

16 A. I do not.

17 Q. Do you know whether ULG had a retainer
18 agreement with the buyer, the seller?

19 A. The buyer or seller or both? Is that --

20 Q. I'm sorry, I misspoke. Let me strike. I'm
21 sorry.

22 Do you know whether ULG had an engagement
23 agreement with the buyer?

24 A. I do not know.

25 Q. Do you know whether ULG had an engagement

1 agreement with the seller?

2 A. I do not know.

3 Q. Do you think that if -- I understand you're
4 not a lawyer, but do you think that ULG would have had
5 a conflict if it represented both the buyer and seller
6 in these transactions?

7 A. I don't know.

8 MR. BURGESS: This will be Exhibit 15.

9 (EUO Exhibit 15 was marked for
10 identification.)

11 BY MR. BURGESS:

12 Q. Mr. Smith, do you recognize Exhibit 15?

13 A. I do.

14 Q. What is it?

15 A. It's a structured income asset marketing
16 piece.

17 Q. And from whom did you receive it; SMI?

18 A. That's correct.

19 Q. And how did you and your firm use this
20 document?

21 A. Part of our material that we gave to a
22 prospect.

23 Q. Was this a PowerPoint presentation, or was
24 this just -- is the document just as it is?

25 A. Document as it is.

1 Q. On the first page there's a paragraph at the
2 bottom that says, "This is intended to be utilized by
3 professional representatives in the explanation of
4 Structured Income Assets with their prospective buyers.
5 This is not a, quote, stand-alone, closed quote,
6 document nor a complete explanation of Structured
7 Income Assets."

8 If it's not a stand-alone document, was there
9 another document or documents that went with it?

10 A. The executive summary is what I showed
11 alongside of it.

12 Q. Okay. Would you expect the summary to have
13 more information than this document?

14 A. I'm not one to say.

15 Q. Did the summary have more information in it
16 to --

17 A. I don't think so. This has more pages.

18 Q. Any other documents that went with this?

19 A. With this?

20 Q. Yeah. Because it says it's not a stand-alone
21 document nor a complete explanation, so I'm trying to
22 figure out if there was any other documents other than
23 the executive summary that accompanied it?

24 A. Exhibit 14.

25 Q. Anything beyond Exhibit 14?

1 A. (Witness shook head.)

2 Q. No?

3 A. No.

4 Q. Turn you to Page 2. At the bottom of the
5 page it says, "Formal legal agreements and filings
6 provide a, quote, Secured, closed quote, monthly
7 payment to the Buyer. The Buyer's attorney, Upstate
8 Law Group (ULG) prepares and files a UCC-1 against the
9 Seller's cash flow to create a first position."

10 And I think you stated this just previously,
11 but is it your understanding that ULG, that Upstate Law
12 Group, represented the buyer?

13 A. Rethinking my answer, I would assume that
14 that's accurate.

15 Q. When you say rethinking --

16 A. Well, I think I might have said I'm not sure
17 who they represent. It might be both.

18 Q. Okay. And now you think it's --

19 A. I would assume the buyer.

20 Q. -- the buyer and not the seller?

21 A. That would be my assumption.

22 Q. I want to take you back to our earlier
23 discussion about the conference calls that were part of
24 your due diligence leading up to the decision to sell
25 these products, okay.

1 During those conference calls with ULG and
2 SMI and Elliott Smith, was there any discussion, do you
3 recall any discussion of whether federal law might
4 prohibit the sale of these income streams?

5 A. I don't recall any discussion.

6 Q. You don't recall any discussion of what we're
7 going to call or what I've called in the notice, that
8 I'm sure you've seen, the federal Anti-Assignment Acts?
9 You know the two statutes referenced in our notice,
10 right?

11 A. That's correct.

12 Q. There was no discussion of those federal
13 Anti-Assignment Acts, right?

14 A. Not that I recall.

15 Q. I take it there was also no discussion by ULG
16 or SMI during those conference calls about at least two
17 state regulatory orders; the one from -- the first one
18 from Arkansas that I referenced earlier and the second
19 one by Iowa that I referenced earlier that predated
20 when Smith & Cox began selling these? I take it the
21 existence of those orders was not something that was
22 brought to your attention during those calls, right?

23 A. It definitely was not.

24 Q. Turning to Page 4 of Exhibit 15, it's got a
25 header that says, "Buyer's Legal Representation," and

1 then the first bullet point says, "Upstate Law Group,
2 LLC of South Carolina is contracted by SMI to provide
3 legal, escrow and payment services for the exclusive
4 benefit of the Buyer and SMI."

5 Is it your understanding that Upstate Law
6 Group jointly represented the buyer and SMI?

7 A. It sure appears so, by what that just said.

8 Q. Well, and when you were -- did you go over
9 these; what's Exhibit 15, did you go over this document
10 with clients, potential clients, before they invested,
11 or did you just --

12 A. Yes.

13 Q. You did?

14 A. Oh, yes.

15 Q. So you read -- you've read that before?

16 A. Yes.

17 Q. At the time that you were offering these
18 investments, was it your understanding that ULG jointly
19 represented both the buyer and SMI?

20 A. I'm not sure I understand the scope of that
21 question, because it could be -- I could take it a
22 couple different ways. Represented is one thing to me.
23 Contracted is another, potentially. As not qualified
24 to make a legal opinion, in my mind that could mean two
25 different things, so...

1 Q. Okay.

2 A. So no to your question.

3 Q. Let me see if I can maybe simplify this.

4 Mr. Chester is here representing you today, he's
5 representing your interests, right?

6 A. Uh-huh.

7 Q. Is it your understanding that Upstate Law
8 Group was representing the interests of both the buyer
9 and SMI in these transactions?

10 A. They could very well have.

11 Q. Was it your understanding that they were?

12 A. I've got to go back. It's very likely that
13 that is true.

14 Q. It's very likely that was your understanding?

15 A. It's very likely that was my understanding.

16 Q. Do you recall having any different
17 understanding?

18 A. No.

19 Q. At the bottom of this Page 4, the last bullet
20 point says, "All Structured Income Asset monthly
21 payments are processed in Upstate Law Group's Trust
22 Accounts."

23 Is that a true statement, to the best of your
24 knowledge?

25 A. That is my understanding.

1 Q. That the best of your recollection is that
2 Upstate Law Group processed the payments?

3 A. Yes, that is my understanding.

4 Q. Upstate Law Group processed the commission
5 payments that your firm received, correct?

6 A. That's my understanding.

7 Q. And Upstate Law Group processed the payments
8 that your investor clients received, correct?

9 A. That is my understanding.

10 MR. BURGESS: Okay. No. 16.

11 (EUO Exhibit 16 was marked for
12 identification.)

13 BY MR. BURGESS:

14 Q. Mr. Smith, do you recognize Exhibit 16?

15 A. I do not.

16 Q. Do you recall whether this was one of the
17 documents that you and your firm produced to the
18 Division in the end of October 2016?

19 A. I really don't.

20 Q. Okay. If you don't, you don't.

21 A. I don't.

22 Q. Do you know -- if we turn the page, though.
23 I am going to make you look at it, because it's just
24 what I do.

25 A. Okay.

1 Q. On the second page there's a paragraph that
2 begins, "Congratulations! You're working with an
3 advisor who has been approved to work with Financial
4 Product Distributors, LLC."

5 Is that name familiar to you?

6 A. No.

7 Q. You don't know what Financial Product
8 Distributors, LLC is?

9 A. I do not.

10 Q. You don't know who its principals are?

11 A. I do not.

12 Q. On, it looks like, four pages into this
13 document, at the Bates page in the bottom right-hand
14 that is ACC000347, there's a paragraph under the header
15 Transaction Assistance Team, and towards the bottom of
16 that paragraph -- well, strike that. Strike that. I'm
17 not seeing what I thought I saw.

18 Okay, done with that one.

19 MR. BURGESS: What number is this?

20 THE COURT REPORTER: 17.

21 (EUO Exhibit 17 was marked for
22 identification.)

23 BY MR. BURGESS:

24 Q. Mr. Smith, do you recognize Exhibit No. 17?

25 A. I do.

1 Q. What is it?

2 A. It's a letter from PAC.

3 Q. Dated November 30th, 2015?

4 A. Thank you. Yes.

5 Q. And what's the significance to you of this
6 letter?

7 A. They're implementing a 90-day moratorium on
8 PAC payments in November of 2016.

9 Q. Do you know why?

10 A. Obviously PAC didn't have the reserves to
11 make the payments for the consumers.

12 Q. Okay.

13 MR. BURGESS: Let's mark this as No. 18,
14 please.

15 (EUO Exhibit 18 was marked for
16 identification.)

17 BY MR. BURGESS:

18 Q. Do you recognize what's been marked as
19 Exhibit No. 18?

20 A. I do not.

21 Q. I'll represent to you that this was a
22 document that you and Smith & Cox produced to our
23 office in October of 2016.

24 A. Okay.

25 Q. And I just have some questions about it.

1 Like you can see, like on the first page, it's titled a
2 General Ledger for Performance Arbitrage Company,
3 right?

4 A. Okay.

5 Q. And it's a spreadsheet format, right?

6 A. Yep.

7 Q. And then on the various pages there's
8 handwritten notes next to it with names, like Smith.

9 A. Knox, Hutson.

10 Q. Yeah.

11 I just -- this isn't a document that you
12 created, right?

13 A. That's correct.

14 Q. Do you know whose handwriting appears next to
15 the data?

16 A. I do not.

17 Q. That's not your handwriting on any of these
18 pages?

19 A. It is not.

20 Q. Do you recall where your firm received this
21 document from?

22 A. I believe I received this when I was in
23 Dallas at a meeting.

24 Q. Okay.

25 A. I could look at the -- well...

1 MR. BURGESS: What number is this?

2 THE COURT REPORTER: 19.

3 (EUO Exhibit 19 was marked for
4 identification.)

5 BY MR. BURGESS:

6 Q. Mr. Smith, you've been handed Exhibit No. 19.
7 Is this document the Form U4, Uniform Application for
8 Securities Industry Registration or Transfer, is it a
9 U4 amendment that you filed or your firm filed for you
10 on July 25th, 2011?

11 A. I would say yes.

12 Q. If you turn to Page 14 of 21 in the upper
13 right-hand corner, and which is the same as Bates page
14 ending in 6026, there's an electronic signature dated
15 July 25th, 2011 by you, correct?

16 A. Uh-huh. Yes.

17 Q. And on Page 13 of 21, under Question 14M, it
18 asks, "Do you have any unsatisfied judgments or liens
19 against you?" And you checked the box No; is that
20 correct?

21 A. That's what it says.

22 Q. Okay. Was that an accurate answer?

23 A. No.

24 Q. Why not?

25 A. Well, this is dated --

1 Q. July 2011, right?

2 A. Correct. And I think the lien was 2013.

3 Q. I think we may have just gotten confused. I
4 asked you whether -- the question asked, "Do you have
5 any unsatisfied judgments or liens against you?" And
6 you answered --

7 A. Oh.

8 Q. -- No.

9 A. Okay.

10 Q. Right?

11 A. Yeah.

12 Q. Was that an accurate answer?

13 A. No.

14 Q. Why not?

15 A. I guess an unsatisfied judgment is something
16 that I'm still dealing with from the Indiana incident.

17 Q. Right, the one we talked about --

18 A. Correct.

19 Q. -- kind of at the --

20 A. Yeah.

21 Q. -- towards the beginning of your examination
22 today, right?

23 A. Yes.

24 Q. What's the woman's name?

25 A. Disinger.

1 Q. Disinger.

2 A. Correct.

3 Q. So this, your answer to Question 14M --

4 A. Was in --

5 Q. -- was inaccurate because you, in fact, did
6 have an unsatisfied judgment against you when you
7 answered this, correct?

8 A. That's correct.

9 Q. Why did you answer it as a No?

10 A. I don't recall. I would, you know -- maybe
11 the way I look at unsatisfied, but might be in my
12 world, in my mind, something different.

13 Q. What would it -- what would unsatisfied mean
14 in your world?

15 A. Have we satisfied it? In my mind, I could
16 say yes. It could be a confusing question to me at
17 that very moment, also. So if you satisfy something,
18 you've satisfied the agreement with something; but we
19 haven't satisfied the payments.

20 Q. Wouldn't that be an unsatisfied judgment?

21 A. Well, the agreement was satisfied, but the
22 amount of payments...

23 Q. All right, well, we're not going to waste
24 time on that.

25 A. Yeah, thank you.

1 Q. We have other things to talk about.

2 A. Of course.

3 MR. BURGESS: This 20?

4 MS. NELSON: Yes.

5 (EUO Exhibit 20 was marked for
6 identification.)

7 BY MR. BURGESS:

8 Q. Mr. Smith, I've just handed you what's been
9 marked as Exhibit No. 20. Is this a copy of a notice
10 of federal tax lien that was recorded in Pima County
11 against you by the Internal Revenue Service on
12 June 25th, 2013?

13 A. Yes.

14 Q. What was the amount of the lien?

15 A. 125,079.09.

16 Q. \$125,079, correct?

17 A. That's what it says.

18 Q. And it says Kind of Tax was 1040. Is that
19 income tax?

20 A. Yes.

21 Q. And the tax period ending was -- as to
22 \$40,000 of this amount, was the tax period ending
23 December 31, 2007; and then with respect to \$85,000 of
24 income tax, the tax period ending was December 31,
25 2008, correct?

1 A. Yes.

2 Q. So these are unpaid taxes from 2007 and 2008,
3 right?

4 A. That's correct, with the exception of the
5 amount that's really due; but yes.

6 MR. CHESTER: Just say what it says.

7 THE WITNESS: Okay.

8 (An off-the-record discussion ensued.)

9 BY MR. BURGESS:

10 Q. Have you paid off these liens?

11 A. No.

12 Q. Have you satisfied this lien?

13 A. I have not.

14 Q. Do you understand the term paid off to be the
15 same as satisfied?

16 A. I do.

17 Q. So this \$125,000 tax lien is unsatisfied,
18 right?

19 A. Currently, yes.

20 Q. And it has been since it was recorded in
21 2013, correct?

22 A. That's correct.

23 Q. Would you agree that the filing of this lien
24 was a change in the facts that were stated in the
25 previous exhibit, Exhibit 19, which was your Form U4

1 amendment that you filed in 2011?

2 A. Yes.

3 Q. Do you believe it was a material change?

4 A. Yes.

5 Q. Significant, right?

6 A. I think so, yes.

7 Q. To your recollection, have you ever amended
8 your Form U4 to disclose the existence of this lien?

9 A. I have not.

10 MR. BURGESS: So this will be
11 Exhibit 21.

12 (EUO Exhibit 21 was marked for
13 identification.)

14 MR. BURGESS: This will be Exhibit 22.

15 (EUO Exhibit 22 was marked for
16 identification.)

17 MR. BURGESS: This will be Exhibit 23.

18 (EUO Exhibit 23 was marked for
19 identification.)

20 BY MR. BURGESS:

21 Q. You've just been handed three exhibits. Is
22 Exhibit No. 21 a Form ADV that you filed for Smith &
23 Cox on September 13th, 2013?

24 A. It says so, yes.

25 Q. If you go to Page 42 of 45.

1 MR. BURGESS: Just for the record, we're
2 almost done, Counsel. I've got maybe five, six, seven
3 minutes, but Ms. Nelson needs to leave.

4 BY MR. BURGESS:

5 Q. Okay. Are you on Page 42 of 45?

6 A. I am.

7 Q. Is that your electronic signature on this
8 page?

9 A. I assume it is, yes.

10 Q. And you signed it under penalty of perjury,
11 if you look at the paragraph under the header
12 Signature? It says you understand you're signing this
13 Form ADV under penalty of perjury, right?

14 "I, the undersigned, sign this Form ADV on
15 behalf of, and with the authority of, the investment
16 advisor"?

17 A. Yes.

18 Q. "The investment advisor and I both certify,
19 under penalty of perjury under the laws of the United
20 States, that the information and statements made in
21 this ADV, including exhibits and any other information
22 submitted, are true and correct," and that you're
23 signing as a free and voluntary act, correct?

24 A. Correct.

25 Q. If you go to Page 38 of 45, please, at the

1 top of the page there's a question labeled D, "Are
2 there any unsatisfied judgments or liens against you,
3 any advisory affiliate, or any management person?"

4 And you answered No.

5 Is that how you answered?

6 A. That is how it is answered.

7 Q. And is that answer inaccurate?

8 A. It is.

9 Q. And it's inaccurate because you hadn't paid
10 the judgment in Indiana, right, to Ms. Disinger?

11 A. Correct.

12 Q. And it's also inaccurate because by
13 September 13th the IRS had filed or recorded a \$125,000
14 tax lien against you, correct?

15 A. That's correct.

16 Q. Okay. Why did you answer that question that
17 way?

18 A. I actually didn't. I mean it was done
19 through my compliance officer. So apparently that was
20 misrepresented, I guess.

21 Q. Did you -- we established that you put your
22 electronic signature on this, right?

23 A. That's correct.

24 Q. Before you put your electronic signature on
25 this filing, did you read it?

1 A. I reviewed it and obviously made an error.

2 Q. Had you informed Elliott Smith -- is Elliott
3 Smith the person who prepared this?

4 A. That's correct.

5 Q. And then he finalized it and sent it to you?

6 A. I don't remember that I -- the --

7 Q. The process?

8 A. -- process, yeah.

9 Q. Did you inform Elliott Smith that the IRS had
10 recorded a tax lien against you?

11 A. I did not.

12 Q. Did you inform Elliott Smith that you had a
13 judgment in Indiana that you had not paid off?

14 A. I did not.

15 Q. Okay. So would you agree with me that he can
16 only work with the information that you provide him?

17 A. I have a -- can I go off the record?

18 MR. CHESTER: No, no, no.

19 MR. BURGESS: You can't go off the
20 record.

21 MR. CHESTER: Do you want him to repeat,
22 repeat the question, have her --

23 THE WITNESS: No, I understand the
24 question, but it's a little layered.

25 Repeat the question, please.

1 (The record was read by the court
2 reporter as follows:

3 QUESTION: So would you agree with me
4 that he can only work with the information
5 that you provide him?)

6 THE WITNESS: Yes.

7 BY MR. BURGESS:

8 Q. Let's look at Exhibit No. 22.

9 MR. CHESTER: Do you want to tell me
10 something off the record?

11 MR. BURGESS: Yeah, do you want to take
12 a break?

13 THE WITNESS: Yeah.

14 MR. CHESTER: Yeah.

15 THE WITNESS: Couple minutes.

16 MR. CHESTER: Yeah, let's take a couple
17 minutes.

18 (A recess was taken from 2:03 p.m. to
19 2:06 p.m.)

20 MR. BURGESS: We can go back on the
21 record.

22 BY MR. BURGESS:

23 Q. Okay. Since we've been off the record and
24 we're now back on, you've consulted with Mr. Chester.
25 Is there anything about your prior testimony that you

1 would like to supplement or correct?

2 A. No.

3 Q. Okay.

4 MR. CHESTER: What number are we on?

5 BY MR. BURGESS:

6 Q. We're on Exhibit No. 22, if you could please
7 take a look at that.

8 Mr. Smith, is this a Form ADV that -- an
9 annual amendment that you filed on February 20th, 2014
10 for Smith & Cox?

11 A. Yes.

12 Q. And if you go to Page 42 of 45, which is
13 Bates page ending in 6357, is that your electronic
14 signature?

15 A. Yes.

16 Q. And, again, you placed your electronic
17 signature on this Form ADV under penalty of perjury,
18 correct?

19 A. Yes.

20 Q. And in so signing it, was it important to you
21 that the information you were submitting on this form
22 be accurate?

23 A. Yes.

24 Q. That was your intention, to be accurate?

25 A. Yes.

1 Q. If we look at, again, in this one it's also
2 Page 38 of 45. At the top of the page, the same
3 question we saw on the previous exhibit, quote, Are
4 there any unsatisfied judgments or liens against you,
5 any advisory affiliate, or any management person,
6 closed quotes.

7 And you answered No, correct?

8 A. That's correct.

9 Q. And that was inaccurate, wasn't it?

10 A. It was.

11 Q. And it was inaccurate because you had the
12 judgment in Indiana that you still hadn't paid off,
13 right?

14 A. Yes.

15 Q. And you had the IRS \$125,000 tax lien, right?

16 A. That's correct.

17 Q. Okay. Did you review this document before
18 you submitted it and filed it?

19 A. I did.

20 Q. Okay. You agree with me that the answer was
21 inaccurate --

22 A. Yes.

23 Q. -- on the judgments and the liens, right?

24 Why did you provide an inaccurate answer?

25 A. It wasn't intentional, by any means. It was

1 just -- now we're being specific on certain areas, and
2 it -- an oversight.

3 Q. Okay.

4 MR. BURGESS: Mark this as Exhibit 24.
5 (EUO Exhibit 24 was marked for
6 identification.)

7 MR. BURGESS: Exhibit 25.
8 (EUO Exhibit 25 was marked for
9 identification.)

10 BY MR. BURGESS:

11 Q. Okay, Mr. Smith, you've just been handed
12 Exhibits 24 and 25. Is Exhibit 24 another federal tax
13 lien that was recorded in Pima County against you on
14 August 2nd, 2016?

15 A. It -- yes.

16 Q. And the amount of the tax lien for unpaid
17 income taxes for the tax period ending December 31,
18 2014 is \$9,594, correct?

19 A. Yes.

20 Q. Is Exhibit No. 25 another federal tax lien
21 that the IRS recorded in Pima County on August 29th,
22 2017?

23 A. Yes.

24 Q. And is this a tax lien for unpaid income tax
25 for the tax period ending December 31, 2009?

1 A. Yes.

2 Q. And what is the amount of this tax lien?

3 A. 43,602.71.

4 Q. Have you satisfied or paid off this tax lien,
5 Exhibit No. 25?

6 A. I don't believe so.

7 Q. With respect to Exhibit No. 24, the tax lien
8 for \$9,594, have you paid that one off?

9 A. I do believe so.

10 Q. When do you believe you paid that off?

11 A. I don't recall.

12 Q. Do you recall -- you don't recall when you
13 paid off \$9,000-plus that you owed to the IRS?

14 A. No. I think it might have been last year.

15 Q. You think sometime in 2017?

16 A. I believe that's accurate.

17 Q. Now let's turn back to Exhibit No. 23. Is
18 this a Form ADV that you filed for Smith & Cox on
19 April 7th, 2016?

20 A. That's correct.

21 Q. And is that your -- on Page 42 of 45, is that
22 your electronic signature?

23 A. It is.

24 Q. And it's under penalty of perjury again?

25 A. Yes.

1 Q. And you knew it was important to provide
2 accurate, truthful information in your answers,
3 correct?

4 A. Yes.

5 Q. Is it also your signature on Page 44 of 45,
6 your electronic signature?

7 A. Yes.

8 Q. Turn your attention to Page 18 of 45. In it
9 there's a question that asks, "Do you or any related
10 person, directly or indirectly, receive compensation
11 from any person for client referrals?"

12 And you answered Yes; is that correct?

13 A. Yes.

14 Q. From whom does Smith & Cox or anyone related
15 to Smith & Cox receive compensation for client
16 referrals?

17 A. I think that's an inaccurate, a mistake.

18 Q. So you don't -- Smith & Cox does not receive
19 compensation from anybody for client referrals?

20 A. No.

21 Q. If you turn to Page 37 of 45, the Bates page
22 ending in 6107, there's again that question about
23 judgments and liens and asks, "Are there any
24 unsatisfied judgments or liens against you, any
25 advisory affiliate, or any management person?"

1 And you answered No, correct?

2 A. Correct.

3 Q. And that answer was inaccurate, correct?

4 A. That's true.

5 Q. Why did you answer it that way?

6 A. It was an oversight.

7 Q. Okay. By now there were -- there was another
8 tax lien that had been filed against you, which we
9 looked at. I take that back. I strike that.

10 It was -- your answer to the judgment lien
11 question here in Exhibit No. 23 was inaccurate because
12 of the unpaid judgment in Indiana, correct?

13 A. Yes.

14 Q. And the --

15 A. Tax lien.

16 Q. -- 2013 tax lien by the IRS for \$125,000,
17 right?

18 A. That's correct.

19 Q. When -- with respect to Exhibit 24, which was
20 the tax lien -- well, let's just stick with Exhibit 24.

21 With respect to Exhibit 24, the tax lien that
22 was filed by the Internal Revenue Service on
23 August 2nd, 2016 for \$9,594 in unpaid taxes against
24 you, was that a change to the facts stated in your
25 Form ADV filed April 7th, 2016, which is Exhibit 23?

1 A. Yes.

2 Q. Okay. Do you agree it was a material change?

3 A. What do you mean by that?

4 Q. Important. Was it --

5 A. I would assume so.

6 Q. And then the same set of questions with
7 respect to Exhibit No. 25, which is the \$43,000 tax
8 lien the IRS filed against you on August 29th of 2017.
9 This tax lien was another change to the facts stated in
10 your Form ADV that was filed in April of 2016, correct?

11 A. Yes.

12 Q. And would you agree that the \$43,000 lien was
13 a material change to those facts?

14 A. What do you mean by that?

15 Q. Important.

16 A. It is important.

17 Q. Have you ever updated your Form U4 to
18 disclose the 2013, 2016 or 2017 tax liens that were
19 filed against you?

20 A. Not currently.

21 Q. When you say not currently, it means you
22 haven't updated your Form U4, right?

23 A. That's kind of in the process now.

24 Q. Well, it's almost five years since the IRS
25 filed its 2013 tax lien against you, right?

1 A. Uh-huh. Yes.

2 Q. And it's been -- in August it will have been
3 two years since the IRS filed its 2016 tax lien against
4 you, right? And it's been several, several months
5 since the IRS filed its 2017 tax lien against you last
6 August. Why the delay in updating your Form U4?

7 A. It just never was something that triggered in
8 my mind.

9 Q. And I take it that you've never updated
10 Smith & Cox's Form ADV to disclose these three tax
11 liens?

12 A. That's correct.

13 MR. BURGESS: Okay. We're concluded for
14 today. We reserve the right to reopen, if we need to,
15 but for today we're concluded.

16 (The examination under oath concluded at
17 2:18 p.m.)

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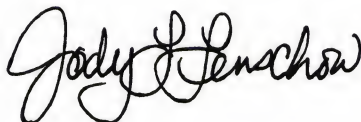
25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings
4 were taken before me; that the foregoing pages are
5 a full, true, and accurate record of the proceedings,
6 all done to the best of my skill and ability; that
7 the proceedings were taken down by me in shorthand
8 and thereafter reduced to print under my direction.

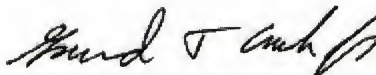
9 I CERTIFY that I am in no way related to
10 any of the parties hereto, nor am I in any way
11 interested in the outcome hereof.

12 I CERTIFY that I have complied with the
13 ethical obligations set forth in ACJA 7-206(F)(3)
14 and ACJA 7-206 (J)(1)(g)(1) and (2). Dated at
15 Phoenix, Arizona, this 20th day of May, 2018.

16 

17 _____
18 JODY L. LENSCHOW, RMR, CRR
19 Certified Reporter
20 Arizona CR No. 50192

21 I CERTIFY that Coash & Coash, Inc., has
22 complied with the ethical obligations set forth in
23 ACJA 7-206 (J)(1)(g)(1) through (6).

24 

25 _____
COASH & COASH, INC.
Registered Reporting Firm
Arizona RRF No. R1036